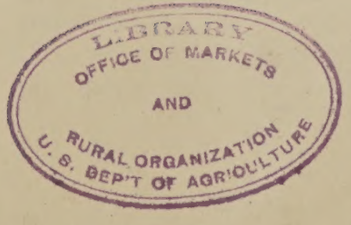

CONFERENCE HELD FROM FEBRUARY 28 TO MARCH 2, 1916, INCLUSIVE, AT ROOM 410, BIEBER BUILDING, FOR EXCHANGE OF VIEWS AND CONSIDERATION OF METHODS FOR REDUCING TIME BETWEEN COMMISSION OF OFFENSES AND TRANSMISSION TO THE DEPARTMENT OF JUSTICE OF CASES ARISING UNDER THE REGULATORY LAWS ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE.



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PRELIMINARY STATEMENT.

On February 8, 1916, the Solicitor sent to the Secretary a memorandum as follows:

I have recently caused a summary to be made of the elapsed time between the dates of the commission of offenses under the various regulatory laws administered by this Department and the dates of transmission of the cases to the Department of Justice for prosecution. The maximum is 4 years and 7 days, and the minimum 18 days. The averages are as follows:

Food and Drugs Act.....	1 year, 6 months, 3 days.
Insecticide Act.....	2 years, 2 months, 11 days.
Meat Inspection Law.....	-- 3 months, 13 days.
Twenty-eight Hour Law.....	2 years, 17 days.
Virus Act.....	1 year, 2 months, 18 days.
Animal Quarantine Laws.....	-- 2 months.
Lacey Act.....	1 year, 1 month.
Plant Quarantine Law.....	-- 5 months, 18 days.

The effectiveness of the enforcement of one of these laws is greatly increased by the quickness of the prosecution for a violation. Information frequently reaches the Department, both from the courts and from the United States Attorneys, that there is considerable indisposition to convict in a case which is regarded as stale because of the length of time since it was committed. It is manifest, therefore, that it is much in the interest of the people, as well as of the Government, to reduce to the lowest practicable limit the period between the commission of an offense and the transmission to the Department of Justice of a request for the institution of prosecution.

There has been an earnest effort made by some, perhaps all, of the branches of the Department charged with the administration of these laws to reduce this elapsed time. Much good has already been accomplished along this line. It has occurred to me, however, that possibly it might be beneficial if the chiefs of the bureaus concerned would designate representatives to meet in conference for an exchange of ideas as to the methods already, or to be, employed in gathering evidence and preparing cases, with the purpose of still further reducing such elapsed time. It is not my view that such a conference should undertake to standardize, or make uniform, the schemes employed in the various bureaus. The circumstances involved in the enforcement of the laws are in many respects different. What I have in mind is that informal discussions and, perhaps debates, in reference to the various problems, would be suggestive to each of the bureaus.

My feeling is so strong that the effectiveness of the administration of these laws is increased by the reduction of the time between the commission and the prosecution of an offense that I think it would be worth while to consider abandonment of cases not already reported which fairly may be said to be stale, in order to concentrate energy upon fresh ones, as to which we could feel sure of getting greater sympathy from the courts and juries.

The table set out above is, of course, subject to considerable explanation. It is only a rough approximation. Nevertheless, it is accurate enough, and sufficient, to show what is the problem of the Department with respect to the point I am now presenting.

The administration of the laws applicable to the National Forests involves questions so different from those arising under the administration of the regulatory laws that it is not believed that the Forest Service is directly concerned in the matter here presented. Furthermore, so far as I can ascertain, there have not been any unusual delays in handling litigation of that bureau. Nevertheless, I think participation by a representative of the Forest Service would be helpful to the other bureaus.

Accordingly, I submit, for your consideration, a suggestion that the chiefs of the following bureaus be requested to designate representatives to attend a conference, which may also be attended by representatives of this Office:

Bureau of Chemistry.
Bureau of Animal Industry.
Bureau of Biological Survey.
Insecticide and Fungicide Board.
Federal Horticultural Board.
Forest Service.

The Secretary approved the suggestion of the conference. It was held from February 28 to March 2, 1916, inclusive, at Room 410, Bieber Building.

A list of those who participated follows:

Name.	Title.	Bureau.
Dr. C. L. Alsberg	Chief	Chemistry.
Dr. R. L. Emerson	Assistant Chief	do
Mr. W. P. Jones	do	do
Mr. W. G. Campbell	Chief, Eastern Inspection District	do
Mr. A. Stengel	Food & Drug Inspector	do
Dr. W. P. Ellenberger	Veterinary Inspector	Animal Industry
Dr. H. J. Shore	Bacteriologist	do
Dr. W. H. Smith, Jr.	Veterinary Inspector	do
Mr. A. J. Raub	Asst. in Live Stock Investigations	do
Mr. Harry Goding	Executive Assistant	do
Dr. T. S. Palmer	Asst. in Charge of Game Preservation	Biological Survey
Mr. W. F. Bancroft	Administrative Asst.	do
Dr. J. K. Haywood	Chairman	Insecticide and Fungicide Board.
Mr. J. G. Shibley	Executive Officer	do
Mr. C. L. Marlatt	Chairman	Federal Horticultural Board.
Mr. W. D. Hunter	Member	do
Mr. C. H. Squire	In Charge Claims and Occupancy	Forest Service
Mr. F. G. Caffey	Solicitor	Solicitor
Mr. R. W. Williams	Assistant to the Solicitor	do
Mr. C. W. Boyle	do	do
Mr. W. C. Henderson	do	do
Mr. Fred Lees	do	do
Mr. Otis H. Gates	do	do
Mr. C. A. Gwinn	do	do

P R O G R A M .

1. The attitude of the courts towards unsubstantial and stale prosecutions.

2. The function of the United States Attorney as, in the last analysis, the sole representative of the Government in presenting to the court cases arising under the regulatory laws.

3. Methods of collecting evidence of the commission of offenses.

4. Methods of reviewing the evidence in Washington and determining whether offenses warranting prosecution have been committed.

5. Hearings before and after institution of prosecutions.

6. Methods of cooperation between the bureaus and the Solicitor's Office.

7. Methods of handling cases in the Solicitor's Office.

8. Suggestions for elimination of duplication of work and for more economical methods.

9. Specific suggestions of various means for reducing time between the commission of offenses and transmission of cases to the Department of Justice.

10. Benefits to accrue in the effectiveness of the administration of regulatory laws by the quickness with which an offense is followed by punishment.

11. Disposition of stale cases.

12. Disposition of cases held in abeyance.

MR. CAFFEY: I just want to say a word, before we start in, as to what I had in mind in making the suggestion of a conference to the Secretary. It was not that we should reach any definite conclusion here in the conference as to methods to be pursued by the different bureaus or boards or offices engaged in the enforcement of these regulatory laws. My intention was that we should here discuss the facts and methods freely and informally and that then a copy of the minutes should go to the Chief of the Bureau, Board, or Office concerned in the administration of those laws, for his information. It is manifest that the problems of the different bureaus are in some respects different. No two bureaus can conduct their business exactly alike because of that difference in their problems; but it does seem that it would be advantageous to exchange ideas and get together informally this way, so that each can ask questions and discuss the topics. Now, I hope that everyone will feel entirely free to express his own ideas. For instance, take the work of the Office of the Solicitor. We shall welcome questions and welcome suggestions, the only purpose being the purpose of everybody, which is to increase the efficiency - particularly with reference to this matter of reduction of time between the commission of the offense and the sending of cases to the Department of Justice. When they get to the Department of Justice, we can have very little to do with the time that is consumed by that Department afterwards and by the courts. Having in view that ultimate matter of reduction of time, I took the liberty of suggesting subjects for discussion, some of which have, and others have not, a direct bearing upon the reduction of time, but have a collateral bearing upon it. For example, the subject suggested to start off with here is "The attitude of the courts toward unsubstantial and stale prosecutions." I remember an expression used by one of my teachers in the law school, that the law is a seamless whole, and it seems to me that is an idea of pretty general application. The Government is a seamless whole, and we have got to have in mind what the other Departments with which we are doing business do, what their methods are, and what their states of mind are. The courts are only human institutions and we want results. We are not merely concerned in doing our particular part of the work right, but we want to join in the whole scheme in the most practical way. So, here in this Department we cannot get the best results unless we put our heads together and join our activities in the best way we can. My intention in the discussion here was to take up one of these topics and hear from everybody, go through it and get some idea from everyone participating in the conference, when he has an idea to suggest, or wants to ask questions, or what not. It will be entirely informal. I do not know how much time will be taken up in that kind of discussion. That method of having everybody discuss the thing seems to bring out the best results; but if some one has another method, why, all right. I only meant to suggest that as a method. In this connection, we may not be able to finish in one day. It seems to me that this is of sufficient importance to give as much time as everyone wants to discuss it; and after lunch hour you may not want to come back until tomorrow. Therefore, I ask if we do not finish by one o'clock today, whether it would be better to adjourn until tomorrow. What is the consensus?

DR. ALSBERG: Yes, I think that would be best.

Voices: Yes.

MR. CAFFEY: Unless there is some change of mind we will proceed with that in view. Now, "The attitude of the courts towards unsubstantial and stale prosecutions," Mr. Henderson.

TOPIC I.
The Attitude of the Courts Towards Unsubstantial and Stale Prosecutions.

MR. HENDERSON: Mr. Caffey, I asked Mr. Gwinn to take a few statements from the decisions of the courts. These cases are mostly those which have originated in the Bureau of Chemistry at one time or other. They are not new cases and do not represent the kind they

are sending up at the present time, neither are they cases for which anybody here was responsible, and do not reflect on the Bureau in any way.

MR. CAFFEY: Just an indication of what the courts' attitude has been.

MR. GWINN: I doubt whether I have all of the cases in which the Courts have enunciated anything regarding the technical nature of the case. But I have a few of them here.

In the case of United States v. Morgan et al., 161 Fed. 587, N. J. No. 1692, Fed. F. & D. Act & Doc. p. 300, Circuit Court, Southern District of New York, July 15, 1910; the shipment involved was induced by the inspector. On motion of new trial and in arrest of judgment, Holt, District Judge, said:

> The pure food act is a beneficial act; and it will be a matter of regret if the inspectors of the Department of Agriculture arouse hostility to it by excessive zeal to institute trivial prosecutions.

In the case of United States v. Lehn & Fink, Circular No. 49, Office of the Solicitor, Fed. F. & D. Act & Doc. p. 384, Circuit Court, Southern District of New York, March 17, 1911; jalap containing 0.82% resin soluble in ether, labeled as containing 12.82%, was alleged to be adulterated and misbranded. The Pharmacopoeia requires "not more than 1.5% resin soluble in ether." Hough, District Judge, in opinion on demurrer to information, said:

> The demurrers are therefore overruled; but it may be added that it seems to me, from a comparison of the counts with the Pharmacopoeia, that the jalap label of which the Government here complains is a grotesque mistake, something flowing from a printer's error or the ignorance of an unskilled chemist. The proportion of resin soluble in ether state in the label, is so enormous and impossible, as to deceive no one to whom the label would mean anything, and such puerile errors ought never to have been made the subject of criminal procedure. A charge based on this kind of mistake is well calculated to bring into disrepute those weapons of the law which ought to be reserved for intentional wrongdoers.

In the case of In re Wilson, Circuit Court, District of Rhode Island, March 8, 1909, 168 Fed. 566; Fed. F. & D. Act & Doc. p. 186, syrup composed of 90% white sugar and 10% maple sugar was alleged to be misbranded because the label "Gold Leaf Syrup, composed of maple and white sugar" falsely represented that the article was composed principally or substantially of maple sugar; Brown, District Judge, denying motion of U. S. Attorney for leave to file the information, said:

> The distinction between the enforcement of law and the abuse of law is lost sight of in the attempt to make this obvious innocent act a criminal misdemeanor.

In the case of United States v. Wright et al., District Court, Western District of Missouri, May 5, 1913, N. J. No. 2828, Fed. F. & D. Act & Doc. p. 639, crude pyroligneous acid labeled "Wright's Liquid Smoke" was alleged to be misbranded because it was not actually smoke. Van Valkenburg, District Judge, sustaining demurrer to the evidence, said:

> No one can be more in sympathy and harmony with the Food and Drugs Act than I am, and for that reason I deprecate any effort to place a strained or unreasonable construction upon its terms, which cannot but help to bring it into disrepute and disrespect with the public. I am not saying this in criticism of the Department or of the District Attorney. No doubt there is a point of view that perhaps can be taken in the sense in which this prosecution

is leveled, but in its practical application, which is the application the courts in their last analysis must place upon it, it is not a prosecution which aims at the particular thing that this law, at least as construed, was aimed to affect in the sale of drugs and food.

In the case of United States v. Phillips Drug Co. F. & D. 6398, I. S. 21720-E, the sample "Crocker's Rheumatic Cure." The shipment was made February 17, 1913. The case was reported to the Attorney General November 4, 1915. The U. S. Attorney, Pittsburg, Pa., wrote to the Attorney General on December 23, 1915, stating that the Phillips Drug Co., a corporation, had been dissolved, and suggesting that the information be withdrawn.

In the case of United States v. Thompson Medical Co., a corporation of Titusville, Pa., F. & D. 5973, I. S. 9101-E. The sample "E. K. Thompson Barosma Compound." Shipment was made October 18, 1912. The case was reported for prosecution December 11, 1914. The U. S. Attorney at Pittsburg in a letter to the Attorney General, dated December 31, 1914, said:

> I respectfully call your attention to the fact that the violation complained of occurred on October 18, 1912, and that the sample labels submitted with the exhibits were not taken for the shipment until February 20, 1913. This shipment was made within two months of the passage of the Sherley Amendment, as soon as the matter was called to the attention of the Thompson Medical Co. they took the matter up with the Department of Agriculture with a view of having the label so revised as to comply fully with the provisions of the Sherley Amendment, and the file discloses that during the summer and fall of 1913 an agreement was reached as to the label, which met the approval of the Department of Agriculture and I assume that since that time the Thompson Medical Co. have complied with the Food and Drugs Act in the matter of branding their product.
>
> In the light of these facts I feel that the course pursued by the Thompson Medical Co. was such as to lead the court in this jurisdiction, even after conviction, to impose such a nominal penalty as not to reimburse the Government for the expense and cost incident to the prosecution. I can also foresee the possibility of difficulty of securing a conviction at the hands of a jury where the circumstances are as indicated by the file in this case. Of course, where there is evidence of other and more recent violations by this company, a different situation may confront us, but under the facts as they are presented by the file, I would urge your concurrence in my recommendation of no prosecution.

The Department declined to concur in the recommendation of the U. S. Attorney on account of certain facts then unknown to the U. S. Attorney which indicated that the offense was of a serious nature.

The defendant on September 23, 1915, entered a plea of nolo contendere, and was fined $10 and costs.

In the case of United States v. Byrne Drug Co., F. & D. 5946, I. S. 7746-E, the shipment occurred October 1, 1912. The case was reported to the Attorney General December 19, 1914. On January 22, 1915, the U. S. Attorney at Scranton, Pa., wrote to the Solicitor, stating that they had a noli prosequi in said case, stating:

> I had in mind the fact that this offense was judged to have been committed on or about the first day of October, 1912, only about two months after the amendment of August 23, 1912, and that this case had been dragging along for some reason or other from that time down to the latter part of December, 1914, before it was placed before me for appropriate action. The delay in presenting the matter to my office which I think warrants the inference that the matter was transmitted to this office probably more for the purpose of having it finally closed in some way than for the purpose of

active and vigorous prosecution against the defendants.

I was advised by the attorney for the defendants that since the complaint was made against them by the Department of Agriculture that they have absolutely changed all their labels, wrappers, cartons, etc., in order to comply with the requirements of law, and upon full and mature consideration of all the facts and circumstances of this case I felt that the ends of justice would be fully subserved by the entry of a nolle prosequi on this information.

"In this view, Judge Witner, after an explanation of the facts and circumstances of the case, fully concurred and unhesitatingly signed an order allowing me to take the action referred to."

The product involved in this case was a soothing syrup of preparation containing opium. It was a case which should have been vigorously prosecuted, but for the fact that it was stale.

In the case of U. S. v. F. Ad. Richter & Co., F. & D. 6307, I. S. Nos. 179-H, 8120-M and 9800-E, the article "Pain Expeller," a liniment, was shipped November 22, 1913. The case was reported to the Attorney General for prosecution June 29, 1915. The U. S. Attorney at New York in a letter dated October 9, 1915, wrote to the Solicitor as follows:

> If you come to the conclusion that the prosecution ought not to be pressed further I have no personal objection to dropping the case, inasmuch as it is not as serious a case as some others recently prosecuted in this district under the Sherley Amendment.

In view of the fact that the case was an old one and the defendant had omitted from his labels all therapeutic claims on which the prosecution was based the Department consented to the information being nolle prossed.

In the case of U. S. v. L. E. Cash, Chicago, Ill., F. & D. 6101, I. S. 2868-E, the sample "Hill's Honey and Tar Compound" was shipped January 16, 1913. The case was reported to the Attorney General for prosecution April 10, 1915. On October 11, 1915, the Department wrote to the U. S. Attorney as follows:

> You are advised that in view of the time that has elapsed since the shipment was made and as the defendant has since transferred his business from Chicago to New York City, it is believed that the Government might with propriety enter a nolle prosequi in this case. Current shipments of the product from New York City will be investigated for the purpose of ascertaining whether the manufacturer is now complying with the law.

In the case of U. S. v.Le Duconge Co., F. & D. 5967, I. S. 7127-E, the sample "Duconge's Pectoral Balsamic Syrup was shipped January 15, 1913. The case was reported to the Attorney General for prosecution April 8, 1915. On January 4, 1916, the Attorney General wrote to the Department as follows:

> The statute of limitations is about to run in this case. As the intrastate sale was made on January 13, 1913, and the interstate shipment two days later, I should like to have a statement of your views as early as convenient.

On January 8, 1914, the Department wrote to the Attorney General as follows:

> The Therapeutic claims made for the product are in the opinion of the Department, entirely unwarranted, and their use on packages containing the article shipped in interstate commerce would seem to constitute a substantial violation to the Sherley Amendment. On the other hand, the interstate shipment was made nearly two years ago, and the case is, therefore, very stale.

The case was nolle prossed.

In the case of U. S. v. The Mentholatum Co., F. & D. 6232, I. S. 4882-E, the article "Mentholatum" was shipped in interstate commerce on October 24, 1912. The case was reported to the Attorney General March 29, 1915. On August 14, 1915, the Department wrote to the U. S. Attorney at Topeka, Kans., as follows:

> At the request of the attorneys for the defendant company further consideration has been given this case. It appears that the shipment on which the prosecution was based was made on or about October 24, 1912, only a few weeks after passage of the Sherley Amendment. It appears further that the company has long since revised the labels and printed matter and the statements attached in the information have been eliminated. Under the circumstances, particularly in view of the age of the case the Department will interpose no objection should you deem it advisable to nolle pros the proceedings.

It appeared from the evidence in this case that the labels on which the prosecution was based had not been in use for two years proceeding the date of filing the information.

In the case of U. S. v. The J. W. S. Delavau Co., F. & D. 5891, I. S. 7717-E, the article "Delavau's Remedy" was shipped in interstate commerce September 12, 1912. The case was reported to the Attorney General for prosecution on June 2, 1915. On June 19, 1915, the U. S. Attorney at Philadelphia wrote to the Department as follows:

> We understand that this corporation is owned by a church society, that the violation was a technical one, and that they are very sensitive about having the church recorded as guilty of a violation of the law. If you feel that this case is one in which a nolle pros should be entered we shall so recommend if you advise us to that effect.

On August 6, 1915, a rehearing was afforded the Delavau Co.

On August 28, 1915, the Department wrote to the United States Attorney at Philadelphia as follows:

> In the present case, however, it appears that the defendant company at the hearing before the Philadelphia laboratory was given reason to believe that it would be afforded an opportunity for further hearing in Washington before a decision would be reached as to whether or not prosecution would be instituted against it. Through inadvertance, this fact seems to have been overlooked. Furthermore, the interstate shipment upon which the prosecution is based was made less than a month after the Sherley Amendment was passed and promptly upon being notified that the exceptions taken by the Department to its labels the company immediately adopted new labels and discontinued the use of their circular. The defendant company has also through its attorneys given assurance that it will make any changes in its present labels which the Department may suggest.
>
> If the facts as above outlined had fully been understood when the case was previously under consideration of the Department, it is thought that the prosecution would not have been recommended.

That is all of the specific cases that I have taken, but it illustrates the point. I understand from Mr. Henderson--I never saw the correspondence--that the United States Attorneys at Cincinnati and Chicago have said that the judges have been asking why the cases were so old.

MR. CAFFEY: Of course, all of this discussion of Mr. Gwinn's is not confined absolutely to the attitude of mind of the courts. Nevertheless, it has a general bearing upon that, and I suppose during the course of this program we won't confine ourselves absolutely

to each single subject, but that is unobjectionable, as before we get through I want to discuss all the subjects anyway. I wonder if any of you gentlemen have a copy here of an extract from a letter that I received from a Judge that I sent around to the heads of the Bureaus. If so, I would like to read it into the record. This particular Federal Judge was a classmate of mine. He was writing upon another matter, and just brought this into his letter. He says:

> You will perhaps be interested to know that, so far as I have come in contact with the Washington Departments, that of Agriculture seems to me to be the best managed. I have been particularly impressed by the sanity and common sense which has characterized its handling of the criminal statutes with which it had to do. There is in some quarters a tendency to injure beneficial statutes by an over harsh enforcement of them, which gives an impression of persecution, and in the long run greatly weakens popular confidence in the statute and in what the Government is trying to do. The best example of what I have in mind are the laws regulating automobiles. Although very good things, they have, in this State at least, been so much injured by ill considered severity in their enforcement that there is now no strong public sentiment behind them; that, of course, is the first essential to success. I think the same criticism could be made in respect to certain Federal Statutes. Your Department has taken a wiser and better course and is causing the laws to be not only enforced but to be respected as well.

I consider the question of what ought to be reported and what ought not to be just about the most difficult question that responsible executive officials have to deal with. There are two sides to this thing: If you fail to report the case, you are incurring a risk of criticism. Well, that is no good reason for reporting the case, just to avoid criticism; but it immediately opens you to the possible objection that you may play favorites. People will make the charge against you that you are playing favorites when there is no basis for it. That simply is a part of the responsibility of having to be an executive official. Another thing that I think we mustn't lose sight of, and that is the attitude of mind of the courts may be wrong. If so, that merely constitutes a problem for us. We have got to deal with them. They are a part of the Federal Government just as much as the Department of Agriculture is, and I should like to hear the whole thing thoroughly debated out as to just what the attitude is. First, we must get the facts as to what the attitude is, and then talk over what we ought to do in view of it. Now in calling on gentlemen, I am going to skip around and in the course of it call on everybody. I would like to hear from Dr. Palmer.

MR. CAFFEY: Unless you want to stand up, I don't see any reason for being formal. Does anybody want to ask any questions of Mr. Gwinn before we proceed.

DR. PALMER: This subject is rather a broad one, particularly in regard to the statutes relating to the shipment of birds. The so-called Lacey Act is somewhat different from the other regulatory laws for the reason that cases are based on State laws and every violation of the Lacey Act presupposes a violation of the State laws. In considering the question of the attitude of the court in a violation of the Lacey Act we have a double problem - the attitude of the Federal Court and the attitude of the State court, if the same violation were brought before it. After fifteen years' experience under the Lacey Act, we find that there is the widest diversity of feeling in the Federal courts in regard to game cases. There are some jurisdictions in which a case has never been brought in the United States District Court, and others in which there have been a number of such prosecutions. There are some judges on the Federal bench who regard violations of the game law as very minor offenses. They seem to be opposed to cases of that nature except those of the most serious kind. In such cases it is often a question how much is gained in spending several hundred dollars in collecting evidence, taking a case into the court, only to have the judge impose a fine

of $1.00. We are confronted with the attitude of the Federal Court and also the attitude of the Federal Court compared with the State court in the same State. In the early days under the Lacey Act, when we had no appropriation and no field men, and we had to carry on a case as best we could, the practice in those jurisdictions in which it was difficult to get convictions in the Federal Court to take cases into the State courts. In some cases we were very successful and in one of the Western States in which ordinarily we could not get a conviction in the Federal court in less than three months, we got one in the State court in three weeks. Where the maximum fine would have been $200 in the Federal Court, we got a fine of $400 in the State court because under the State law the fine was $20 for each bird illegally shipped and by basing the charge on 20 birds the fine was $400. In the Federal Courts I think the shortest time we have been able to secure action on a case is a little over two months and in a number of cases it has been little short of three years, the statute of limitations. It seems to me that the attitude of the courts in these stale cases is well shown by the penalties imposed. When we get a fine of less than $10 for shipping birds contrary to law, we believe it shows that the court is satisfied that the case is not a serious offense or that it is too old, or for some reason ought not be prosecuted. When we consider that under the State law in New York the usual penalty for violation of the game law is $60 and occasionally goes as high as $4,000 and $5,000, while in the Federal court we get $25 for the first offense, it is a question how seriously the court regards the offense we present. In California the minimum fine imposed under the State laws is $25, but we are fortunate if the Federal court imposes a $25 fine for a first offense. We have had a number of cases in various jurisdictions in which the fines have been less than $10, some have been only a dollar, showing that the court has not considered the offense serious. It seems that the penalties imposed express this fact as strongly as any printed opinion; and I know from remarks made officially and unofficially that some judges thought these cases savored of persecution rather than prosecution. There are certain classes of cases particularly open to criticism. For example, cases in which the offense is comparatively small, as when only two or three birds have been shipped, possibly by mistake. My own opinion is that such cases ought not be presented to the Federal courts, except as a last resort, for the reason that the Department is always open to the objection of persecuting rather than prosecuting. Oftentimes these cases fail and the fines imposed certainly show that the court does not approve of them. Reference has been made by the previous speaker to a case in which the shipper was induced to violate the Pure Food Law in order to secure evidence as to the interstate commerce feature of the violation. Now, in our cases, we have occasionally resorted to that expedient, but only as a last resort. We have used it when an individual has repeatedly violated the interstate commerce law, but we could not get the evidence of past offenses and the office had to have a new shipment made as an example. Some of the courts are very much opposed to cases of this kind and it is impossible in certain jurisdictions to secure convictions in such cases. However, in one case in Chicago against one of the large Department stores, the court did not hesitate to impose a fine of $100 for shipping a small package of plumage for millinery purposes. This particular shipment was made simply to secure evidence of what that department store had previously done a hundred, perhaps a thousand times, in violation of law, but of which no record was obtainable. But this expedient should be handled with the greatest care and used only as a last resort. Now, it seems to be important that the attitude of the Federal Court should be considered with respect to the attitude of the State court. It is a question whether, when we go into the United States District Court and get a fine of $5, whereas in a State court fines of $10 to $50 would be given for the same offenses - whether such cases are handled in the best way. Under the Lacey Act, we have to consider this double view of the cases for the reason that the Federal offense is based on a previous State offense. For a number of years our chief difficulty has been to impress upon the Federal courts the seriousness of the violation and what it really means.

MR. CAFFEY: I would like to ask you a question. When you found the court either not approving or not in sympathy with the enforcement of the law, what steps have been taken, if any, to educate the judge?

DR. PALMER: We try to find out whether the judge is interested in the general subject of game protection, and consequently if he appreciates what the shipment of game on a wholesale scale means. I can illustrate this point by a North Carolina case, involving the shipment of a large number of quail to one of the large markets, either in Baltimore or Washington. The case was presented in the usual way and when it came up for trial the defendant was represented by able counsel who pictured to the court the hardship imposed on a consignor who had inadvertently put a few quail in a barrel of poultry merely to save them from being spoiled; and contended that in these times of high prices it should not be a crime to save a little food, and that it was not a serious offense to put them in with poultry shipped to market. The court took the same view and imposed a fine of $5.00. It seems that this defendant did not inadvertently put a few quail into the barrel of poultry, but had been for several years shipping enormous quantities of quail. Fortunately we had other cases and at the next term of court a second case was presented which brought out the fact that the previous year the defendant had shipped 14,000 quail. The judge appreciated the circumstances that he had been imposed upon, fined the defendant $100 and gave notice that the next offense would result in a jail sentence.

We are often called upon by a United States Attorney to present the evidence regarding all the shipments made by a defendant at once. We are loath to do this. It involves extra labor, time and expense, and the United States Attorney is likely to combine all these offenses in one case, and it being a first offense, if he secures a conviction and fine of $5, the case amounts to nothing. The defendant regards the fine as a tax and we have no further redress, except to begin again in case of another shipment. Whereas, if we try the first case and the fine is small, and then go back at the next term of court, with a second case which can be presented in stronger light, and then have a third case, the chances are the shipments will cease very promptly. By prosecuting all the cases at once, the fine is likely to be small. Consequently, we prefer to try our cases separately.

MR. WILLIAMS: There is one question I would like to ask. It is a very important one, arising frequently, and is peculiar to the Lacey Act. As he stated, our prosecutions under section 242 of the Penal Code are based on violations of the State Law. Now in those of our cases where the defendant has been previously prosecuted in the State court and either acquitted or convicted, I would like Dr. Palmer to give us the benefit of his experience as to the attitude of the Federal Courts with reference to such prosecutions.

DR. PALMER: I should have mentioned, that among our stale cases are a number in which the States have failed to secure conviction and these cases are submitted to the Department for any action possible. In most of the States, the statute of limitations as to game cases is very short, frequently three months, usually not more than a year. The State often fails in securing a conviction but feels that possibly some action should be taken to prevent a repetition of the offense, and appeal to us. Of course, if the case has been formally tried by a State court and the defendant has been freed, we have practically no redress.

MR. CAFFEY: Jude Waddill so held in that case at Norfolk.

MR. WILLIAMS: Yes. That is true as a matter of law.

DR. PALMER: There are also cases that fail for other reasons, and when I say "fail," I do not mean necessarily result in acquittal. State officers regard a fine of $1 a failure as well as we do. These cases should be governed by the circumstances. If the

offender is an old offender or the offense is a serious one every effort should be made to bring the defendant to justice in the Federal court. If, on the other hand, we cannot hope to secure a fine in the Federal court at least equal to the fine imposed in the State court, I doubt the expediency of prosecuting the case except under exceptional circumstances. For example, the State courts of Michigan usually impose a fine of $25 for the shipment of game out of the State. If we take a case in Michigan into the Federal Court and secure a fine of $1 or $5, I do not think we have accomplished very much because the defendant and his friends are apt to regard the fine in the Federal court as very slight and simply as a tax on his business rather than something to deter him from repeating the offense. Unless we can hope to get the usual fine in the State court, I do not think it is wise to prosecute except in the State courts.

MR. CAFFEY: You have to take into account the State as well as the Federal law and cannot publish any notice of judgment.

MR. PALMER: I might mention that the Lacey Act is peculiar in several respects and while based on the State law it is also based on other acts. For example, in cases of importing birds from abroad without permit, we have invoked the customs and navigation laws. An East Indian vessel brought in a few birds to New York which a member of the crew smuggled through a port hole. Later on the facts were discovered. In order to make an example of that case, we took action through the Treasury Department, the Collector of Customs, and also through the United States Attorney. A permit for the entry of the birds could have been had upon application but no permit was applied for. It developed that the birds were smuggled off the ship after 6 p.m. after the custom guards had been withdrawn. That made the offense more serious. The Collector imposed a fine of $400 on the captain of the vessel and the fine was paid. The United States Attorney attempted to take action under the Lacey Act against the member of the crew responsible for bringing in the birds without permit, but before an indictment was secured the vessel sailed and the case was dropped. In some instances evidence can be collected for cases which we cannot prosecute in the United States District Court. For example, the shipping provision of the Federal law relates to the shipping of dead birds, but very often birds are shipped alive and killed afterwards, and this avoids a direct violation of the Lacey Act. The most noted case of that kind which has occurred was the shipment of ducks from the Eastern shore of Virginia to New York. Our man collected the evidence, but we could do nothing with the shipper because the birds were shipped alive.

MR. CAFFEY: Murdered in transit?

DR. PALMER: No. Not murdered in transit but murdered at destination. They were shipped from Virginia to New Jersey, then to New York and from a so-called game farm in New York taken to New York City and sold. We collected the evidence in regard to shipment and turned it over to the Conservation Commission of New York. While the case was never brought to trial it was compromised for $20,000 in cash. The evidence was then turned over to the Game Commission of New Jersey and the New Jersey Commission collected $5,000, making $25,000 penalty in a case which we could not prosecute in the Federal Court.

MR. RAUB: Mr. Chairman, in regard to the attitude of the court on unsubstantial and stale prosecutions under the 28-hour law, I hardly feel that I can give in substance what you want from my experience, as it has been more on stale cases where there was no actual prosecution brought in court that the best results were obtained. The settlement was made in some way out of court whereby a fine was paid, and the railroads agreed to maintain a certain feeding schedule and also make improvements in their feeding yards, thereby bettering the conditions under which the animals were handled en route. On that ground, a number of cases were set aside awaiting future action of the railroad in the carrying of live stock over their lines. However, regarding the unsubstantial cases, my experience has been that

it is absolutely useless to take up our time and the time of the Solicitor's Office and the court, because they don't care to bother with them unless there is some point of law which is of value to be brought out.

DR. PALMER: I would like to ask, does the question ever come up where a shipment exceeds the 28 hours, whether the prosecution is justified or not?

MR. RAUB: I don't catch the question.

DR. PALMER: Let me state our problem in connection with the 28-hour law, and then you can see my point. We are shipping numbers of elk in various parts of the country. It is often difficult to ship them from one point to another without unloading under the terms of the 28-hour law. Consequently, we have to feed and water en route. We had a case only last week where our shipment met with an accident and was delayed and then forwarded after a delay of some 6 or 8 hours. Now at the point of destination, they may not have been apprised of that delay. Have you ever cases under the 28-hour law in which prosecutions are brought through accident or inadvertence? What does the court do in those matters?

MR. RAUB: The law itself takes care of that. Under certain circumstances such as you mention, the railroad company is relieved from obligation, provided that the confinement beyond the statutory period was caused by wreck, storms or other unavoidable causes. We have, however, any number of cases arising where the time limit expires before arrival at destination, where a notation is made on the waybill that the animals were fed, when they haven't been given any feed at all. Such cases we prosecute whenever we can secure sufficient evidence.

DR. PALMER: Do you prosecute for 30 hours?

MR. RAUB: We want to prosecute for any time over the 28 hours, or the 36-hour period if request is made extending the time to 36 hours. We want all cases reported of any confinement beyond the statutory period.

MR. CAFFEY: When the shipper signs a so-called 36-hour request, the time is automatically extended?

MR. RAUB: The extension of the time through written request of the shipper simply makes a 36-hour shipment of it instead of a 28-hour. The railroads are taking advantage of this and have made the law practically 36 hours instead of 28. Practically all shipments are being shipped as 36-hour shipments. But the same thing applies to either 28 or 36-hour shipments. If they are fed en route they must be properly fed, given a certain amount of feed according to the hours of confinement in accordance with the recommendation which has been given out by the Department.

MR. SQUIRE: With respect to stale prosecutions, the Forest Service is now having little difficulty. This is partly due to the fact that trespasses can not now occur without the offense coming to the knowledge of a Forest Ranger within a very short time. He will either discover the acts himself in patrolling his district or they will be reported to him. Growing out of the experience it has had, the Forest Service has devised a form of report which the Rangers use in reporting any illegal acts which come to their notice. This form is so arranged that in filling it out the Rangers necessarily obtain such evidence as is required in order that a case may be presented properly to the Department of Justice. Furthermore, we get a great deal of assistance from the Assistant to the Solicitor stationed at our District Headquarters. He reviews the field officers' reports when they come in and if anything is lacking which he feels the Department of Justice will need this is asked for and generally can be secured without much delay. The result of this procedure is that our cases are usually in the hands of the District Attorney within two or three months at most after the offense has been committed.

The Forest Service at one time did have a good deal of trouble with old timber trespasses. Prior to the establishment of the Forest Service the public timber lands were under practically no supervision and this resulted in very extensive unlawful cutting of timber. On taking charge of the National Forests the Forest Service discovered a good many of these old cases. It took some time to secure evidence necessary to a successful prosecution of the offenders. Cases of that character, of course, no longer occur.

As to the prosecution of trivial cases, this subject has caused us a good deal of concern at different times. It has been our policy to avoid litigation as much as possible and to go as far as we can in getting the regulations of the Department observed without going to the courts for assistance. We do, of course, have cases which seem to be trivial, such as cases growing out of the destruction of signs through being used as targets and shot to pieces, and cases of malicious cutting of telephone wires. We are reluctant to bring these small matters before a Federal Judge, nevertheless, such a course sometimes seems desirable because of the publicity that is given to the matter and the deterent effect the prosecution has on other persons. A great many of the less important trespasses we are able to satisfactorily adjust, particularly where the cutting of timber or grazing of stock is involved, by getting the trespasser to pay for the timber, or the forage which his stock has consumed. We compromise these minor violations of the regulations whenever possible.

MR. CAFFEY: But that is only where you, under the facts, can conclude that it is an innocent trespass?

MR. SQUIRE: Either innocent or that it occurred through a misunderstanding of rights. At one time we had a great many violations of the regulations relating to the use of National Forest lands for grazing purposes. Often stockmen were advised by local attorneys that they had a right to run their stock on the public land and to let them graze there without any permit from the Department. After it was shown by taking a case to the Supreme Court that the Department did have the right to regulate such matters, the Service compromised a number of cases which were pending by having the offenders pay the grazing fees which would have been required in the first place had a permit been secured.

MR. CAFFEY: Mr. Squire, may I ask you, haven't you experienced a considerable change in many jurisdictions in the West in the attitude of the courts and juries to Forest Service cases?

MR. SQUIRE: Oh, yes.

MR. CAFFEY: Will you please tell those gentlemen something about that?

MR. SQUIRE: Prior to the establishment of the National Forests, as I have already stated, the public timber lands were not under close supervision and people residing in the vicinity thereof were in the habit of helping themselves to timber whenever they required it and to generally make use of such lands just as though they were the owners thereof. This practice had gone on for so long a time that restricting such privileges after the National Forests were established was very much resented. A great amount of misrepresentation was put out, especially in the local press, and much misunderstanding as to the purpose of the Government and the rights of the citizens grew out of this. The National Forests have now been under close supervision for something like 10 years. In the meantime citizens living in their vicinity have come to understand not only the rights of the Government in the lands, but also its purposes in administering them. With few exceptions the work the Forest Service is doing now meets with the local approval and our cases in the courts are given sympathetic consideration.

MR. CAFFEY: Dr. Haywood?

DR. HAYWOOD: Mr. Caffey, under the Insecticide Act, I do not believe we have had any special trouble with the trivial cases. It has been our policy ever since we started enforcing the law, if the

cases were trivial, to handle them by correspondence rather than by prosecution and only put the strong cases up to the court; but there are times when I think it is necessary to put a trivial case under our Act up to the courts and such a case as that is one in which we have tried by all means in our power by correspondence to get the manufacturer to see these trivial faults in his label, but he evidently won't see them; and under such circumstances we feel we are justified in referring the case to the court and believe that if we refer it to the court with a statement that we have tried to tell the manufacturer what to do, that it will relieve the fact that it is a trivial case. I do not mean that we would put a very trivial thing up to the court. Sometimes they might appear trivial to some; but, when you consider, for example, that "non-poisonous" is put on insecticides - where, in fact, they are poisonous but not virulently poisonous, having "non-poisonous" on the label would cause the insecticide to be very carelessly used around the household. We feel that this should be taken off because of the children and the pet animals. Therefore, we have felt that in those cases that are trivial enough in the beginning to take up by correspondence, where the manufacturer will not change his label, we should usually prosecute.

In regard to the cases that are stale, I wish to say that we have special conditions under the insecticide act that cause quite a number of our cases to be stale and we cannot see that there is any way of getting around the staleness of a good many of these cases. We have seen some cases since this discussion has come up, in which we can shorten the time, and we propose taking that up now, or perhaps later, but in a great many cases of insecticides and fungicides which are reported, we have no experts who can say they have any information whether these particular substances will kill the insects or fungi for which recommended. Therefore, it is a case of testing them out against the insects and fungi for which they are recommended. We cannot collect all the insects we want at the time we want them. We must get them under natural conditions. We cannot collect all the fungi. Therefore, we have to wait for them to come on the trees or animals and this puts our insecticide cases off. That often makes the wait a long one between collection and saying whether an insecticide or fungicide will or will not do what is claimed for it. If we could offer expert testimony as under the Food and Drugs Act, there would not be this delay. They can offer expert testimony, but we cannot because nobody knows whether this particular substance or mixture of substances will be effective, therefore, we have to put cases to the court that are older than we would like, and I do not see how we can reduce that very much. There are certain lines wherein I believe the Insecticide Board can make a reduction in the time it takes to bring the cases to the court. I do not know whether this is the proper time to take this up, because it comes up again under the other topics. I am going to tell you what has caused the delays and how they may be met.

MR. CAFFEY: It is just as you say. Perhaps it will be just as well to take it up later. I will ask here what your experience has been as to the attitude of the courts toward insecticide cases and what steps have been taken toward education of the courts?

DR. HAYWOOD: As far as I can judge, the courts - well, I guess it is the same experience as they have had under the Food and Drugs Act - some courts will consider a case a substantial violation and another court will consider that exactly the same case is not a substantial violation.

MR. CAFFEY: Now, take an experience I know you have had, with one of the judges who was formerly a United States attorney. You have had no trouble in his district. Oftentimes you have a judge who never heard of the Insecticide Act.

DR. HAYWOOD: We have never had any case where they refused to prosecute or jumped on us for sending too stale cases. There are a number of cases where they have imposed merely nominal fines when we felt they could have given a good large fine. We constantly meet with that. Whether this is due to the fact that the cases - some of them - are old, or whether it is due to the fact that they do not understand what we mean by our adulteration or misbranding, I do not know, because there is nothing in the case to show why. I do think

that under our law it would be better if we paid some attention to sending a representative from your office, at times accompanied by an expert from the Insecticide Board, at times not - depending on the case - to explain to the United States Attorney why we are prosecuting such cases and why they are substantial violations of the law. We have done that in some jurisdictions, but I think we can extend it to advantage.

MR. CAFFEY: Any questions?

MR. SQUIRE: I just want to say that often in these cases where the fine is very small the defendant, nevertheless, is put to considerable expense. I recall a Forest Service case where the defendant was fined $10, but he afterwards stated that the court costs and attorneys' fees ran his expenses up to $1,000. Therefore, it does not follow that because a defendant is fined a few dollars only that that is the only expense he incurs.

DR. HAYWOOD: When the defendant pleads guilty, it does not make much expense; and if he is fined $10, when we think he should be fined $300 and sometimes $1,000, it seems that we should take some steps to educate the United States Attorney at least as to why we consider these substantial violations of the act.

MY BOYLE: In enforcing the meat inspection act, we have received in several instances letters from the United States Attorneys stating that they do not regard it advisable to present violations of that act to the Grand Jury for returning indictments in cases where the amount of product involved in shipments is very small. Also, in some cases the courts have taken into consideration in imposing sentence, on pleas of guilty, the age of the defendants and their business station in life. Where the defendant is old, a man of good reputation, or where the defendant is youthful and one of good reputation, as a general rule, the court imposes a very light fine, and sometimes accepts his personal bonds. In the 28-hour law cases, of course, the statute of limitations runs for a period of 5 years. I know of no instance where the United States Attorney has complained about the staleness of those cases, nor have we any complaints in regard to the staleness of the cases reported under the meat inspection act. As to quarantine cases, we have a few where the jury refused to return an indictment because the violations were considered rather technical. The defendants were poor people residing near the State line, and merely allowed their cattle to drift across the State line in violation of the quarantine law. On the whole, it seems that there is an attitude on the part of United States Attorneys not to prosecute cases in which the violations are not regarded as substantial. Where the offense is considered rather technical, the courts seem disposed to impose the minimum fine.

MR. CAFFEY: Dr. Alsberg, will you favor us?

DR. ALSBERG: I personally don't regard the amount of the fine as of any deep significance. Under the Food and Drugs Act, the notice of judgment damages business reputations in a way that can't be measured in terms of money. We have very frequently insisted on trying a case which was old, or which had perhaps some other weak features in it, because it was a serious violation of the law. For instance, we have had cases of say tuberculosis cures in which the parties concerned were perhaps not intentionally violating the law, old people, or ignorant people, or in one case, a very young person; but the harm which can be done by an alleged tuberculosis cure, whether the person who was selling such a cure was vicious in intent or not, is so great that we have insisted on trying out those cases, even though we anticipated that the judge would impose a small fine. The important thing to us isn't the fine; it is the notice of judgment. Another point that I would like to make is that I think - well, I don't quite agree with Mr. Boyle on his attitude about the cost of finding out the weak features of a case. I think that the Federal Government oughtn't to take the cost of preparing a case into consideration at all. I think that the danger of doing an injustice because it would take a lot of money to get all the information about it is sufficiently great so that the cost of preparing a case ought not in my opinion to be taken into consideration. We endeavor

to find out all we can about the case, irrespective of what it is going to cost us, under the Food and Drugs Act, so as to reduce those cases in which we would cause an injustice to a minimum. Of course, there will always be cases in which something will turn up in court that you couldn't learn beforehand. But the mere fact of hailing anybody into court--it doesn't make any difference whether the fine is two cents or $10,000--is some punishment, because there is always a certain slur on the person's reputation if he has been in court, even if he has been found technically innocent. I think great care should be taken to avoid bringing those cases into court, even aside from any question of injuring the reputation of the Federal Government and the Department when such a nominal verdict is received or handed down. I would like to say at this point that this is a matter that might perhaps be discussed later with reference to something that Dr. Haywood said. I am not familiar with the way in which the Insecticide Board handles their cases entirely, but I think that the argument that he gave us that it is necessary to take a good deal of time to examine the case can be avoided by a control over the collection of samples. I don't know whether the Insecticide Board controls the collection of samples or not, but it is perfectly simple--at least under the Food and Drugs Act--where you are dealing with a matter which you believe to be a violation of the law. But where the technical, chemical, or other scientific evidence is not available in the literature because the question has never just been presented in that form--you may as a chemist be pretty certain that the thing is a violation of the law, but the technical evidence doesn't exist because this particular question in that form has never been investigated by anybody. In such cases, it should be--at least, you will find it so under the Food and Drugs Act--a simple matter to collect an unofficial sample which can be made the basis of the investigation, and then when you have the investigation made and the facts before you, it should be a very simple matter in these insecticide cases, as well as under the Food and Drugs Act, to direct the collection of an official sample which can then be put through with speed and despatch. I realize very fully that it often happens that one doesn't realize that such conditions exist until at the time of the hearing facts are brought out, but even in such case, it would seem preferable in many instances to abate the original case, make an investigation, and then start a fresh case. We are pursuing that practice wherever practicable under the Food and Drugs Act. Of course, it may not be possible to make a fresh case because the hearing may have the effect of causing a man to revise his labels or change his practices. Under such circumstances, it would have to be a matter of judgment in each case whether the case is sufficiently flagrant , whether you prosecute an old case, or drop the matter.

MR. CAFFEY: What would you say is the present state of mind of the courts toward the Food and Drugs Act cases - whether this is on the whole pretty sympathetic, or growing more or less so?

DR. ALSBERG: I would say it is growing more sympathetic than it has been, partly because the courts understand as they did not some years ago, partly because few immaterial cases are coming to them and partly because cases are better prepared, naturally as we gain more experience. The trouble under the Food and Drugs Act is that the Food and Drugs Act, as you probably very well know, calls several different types of offenses by the same name. Ordinarily, misbranding of a preparation to the lay mind and presumably to the minds of most judges, who are laymen in the matter involved, would seem to be less important than adulteration. As a matter of fact, there are two different types of misbranding. There is the type of misbranding where the food or drug is called by the wrong name and a misstatement is made about it. There are the Sherley Amendment cases where the misbranding consists in the false therapeutic claims, and the latter are perhaps the most serious cases we have to deal with under the Food and Drugs Act. Both of these classes of cases are lumped together as "misbranding" and I think it is unfortunate that in the Sherley Amendment such an offense is called "misbranding." I should regard it as preferable if some special word, neither adulteration nor misbranding, were used.

MR. CAFFEY: Such as "fraud."

Dr. ALBSERG: So as to set it apart and distinct from the misbranding of food, which is in many cases not a serious matter. A similar condition exists with reference to adulteration. An article may be adulterated if it has become poisonous or deleterious to health. This is a very serious matter. Another case, the article may be adulterated without being in the least unwholesome. The best instance I can think of is honey, which has been adulterated to a greater or less extent by the addition of invert sugar. Now, honey is to a great extent invert sugar and the mixture which would be made by taking 50 parts of the honey and 50 parts of invert sugar would be practically indistinguishable in taste and also in nutritive value from pure honey. It is an offense because it is a commercial fraud. The sugar costs less. The offense is called adulteration and the honey is regarded as impure. It is not impure. It is purer than honey because invert sugar is one of the purest substances in commerce today. It is almost pure sugar, and honey contains pollen, wax, etc. and so in this particular case the adulterated article is, chemically speaking, a purer article than the unadulterated one. Now, when you have these two types of cases--adulteration which involves a question of health and one which is merely a cheat--it is hard to get the courts to distinguish. I do not think the law should have been made to cover two totally different offenses in the same way. I do not wonder that the courts are sometimes confused, and I think the unevenness of the fines that are imposed by the same judge are due to this confusion of terms of the law. I do not think you could make a flat rate for food and drug cases, for a first offense, a Sherley Amendment case, or a case in which the food contains an injurious substance, or for forms of misbranding of food products.

MR. CAFFEY: Have you not found sometimes when you send a case up in a jurisdiction where there is a new judge who is ignorant of the law, you have considerable difficulty on that account?

DR. ALSBERG: I think that is very true. Of course, there are all kinds of conditions that may make a difference in the way a judge looks at the case. You try a case of adulteration of cider before a judge raised in the city and you are not likely to get the same attention as if tried before a judge who was a country boy. Then, if you try a Sherley Amendment case, misbranding with reference to therapeutic claims, before a judge who has had some unfortunate experience with experts--he may have had the misfortune to pass through the hands of a number of physicians who have failed in their diagnosis--you are more likely to get a nominal fine than in a case where the judge has not had an experience of this kind. You would not expect it under the Insecticide Act or the 28-hour law, or any of the other regulatory laws except perhaps the Lacey Act. In Food and Drug cases the judges' personal experiences are important. It is true that new judges are harder to deal with, but I do not think this is as important as their personal experiences.

MR. CAFFEY: Any questions?

MR. HENDERSON: I would like to ask if the Doctor doesn't think the fine reflects the attitude of the court and affects the value of the notice of judgment, particularly where defendant's business depends on a good reputation.

DR. ALSBERG: It shows the attitude of mind of the court. I do not mean to say that it does not have some effect on the mind and action of the defendant when you are dealing with men who are in business and have reputations and whose businesses depend on their reputations. Where the fine is nominal and you are dealing with men who have no reputations anyway, but are doing a business which is not in itself a legitimate business, the notice of judgment makes very little difference, except that it gives municipal health officers, advertising agents, and newspapers who want to accept only dedent advertising, information--and thus closes a good many media of advertising to these people. A large fine has this effect; it indi-

cates that if the man comes up for a second offense, he is likely to get a jail sentence. The difference between $10 and $200 is significant to the man only so far as it indicates that he may have to go to jail the next time.

MR HENDERSON: Where there is a fraudulent branding case against a medicine, the man comes in and pleads nollo contendere. The judge fines him fifty cents. He can use that as an advertisement. The judge showed what he thought of the case by the fine.

DR. ALSBERG: That is also true; but if the case was a flagrant one, as a consumption cure, we would bring this case in other jurisdictions.

DR. HAYWOOD: We think that the size of the penalty affects the value of the notice of judgment.

DR. ALSBERG: I would see if the man was still doing business, and if so, bring fresh cases by seizure or criminal prosecution.

DR. HAYWOOD: I want to mention one thing that Dr. Alsberg spoke of. That is the handling of cases by unofficial samples and afterwards getting official samples. In most insecticide cases this is impossible. It is not a matter of mere chemical analysis to decide whether a product will do what is claimed. It is a matter of whether that combination of substances in particular quantities at particular dilutions will do what is claimed for it. Now it does not hurry the case if we make all those tests before and then start with a new sample, because we have to go through a new test of the new sample anyway. We have to wait for the insects and fungi on the new sample just as on the old one. Not only is this true but the insecticide and fungicide manufacturers are often very ignorant and the insecticide or fungicide is at one time of one composition and again it is of another composition. Take kerosene emulsion, for example, at one time you will find 60 parts kerosene and the next time have 40 parts kerosene. At the dilution that he recommends it may kill with 60 parts but with 40 parts, it will not kill the particular insects that he says it will. Therefore, it comes down to testing the particular insecticide at the particular dilutions against the particular insects and fungi for which the manufacturer says it is good and we cannot base prosecution in one case on another sample of that man's goods. It is not quite the same as therapeutic claims because the dilutions enter into it. If the man kept to a constant formula, we might reason: a chemical analysis of this unofficial sample showed that it had a certain composition. This was tested at the dilutions named against cod moth, etc. and was found not to be effective. Now, we have a new sample which is the official sample, and if it is of exactly the same chemical composition, we might be able to reason that it also will not be effective. However, the official sample practically never has the same composition as the other. It sometimes has less and sometimes more of a certain substance. We do not know enough to say what the second sample will do, unless we test it in the same way as the first sample.

MR. CAFFEY: In part, however, Dr. Alsberg's suggestion as applied to insecticides and fungicides was this, that you would not go out looking for your new samples just after that particular bug you wanted to try it on had gone out of season. It could not be done out of season. If he was only to be found in the spring you would not go out in the summer to get the samples.

DR. HAYWOOD: That is looked after and we have the inspectors collect according to season, but when you take into consideration the following facts, you will see why it takes a long time to report on most insecticide and fungicide samples. We will suppose first that the inspector has not collected the sample until two or three months after it was shipped - this is a good average time. The entomologist or plant pathologist starts his tests in say March and it is necessary for him to continue these tests on the trees until say September or October. Just one spraying against an insect or fungus is not sufficient, but a regular schedule must be followed

throughout the season. It will be October or November before we get our report and even then the tests often have to be repeated, so that we can be sure. There is no way for the entomologist or plant pathologist to speed up. As a consequence, it is often twelve months after the sample was collected before we can possibly get the report of test of same and even then we may have to try the sample out another season to be sure of our tests. Thus the cases, which could quickly be reported on, if a chemical analysis only were involved, are unavoidably delayed by the time necessary to make the insecticidal and fungicidal tests.

MR. MARLATT: Each of these laws introduces new phases of control. After listening to what has been said this morning, I am rather inclined to think that we have the best law (Plant Quarantine Act) from the standpoint of control. The reason is that we have put into the law and regulations a good deal of direct power of control.

MR. CAFFEY: That is without prosecution?

MR. MARLATT: Without prosecution. We have incorporated in our regulations the power to withdraw or revoke permits and licenses in the case of articles from foreign countries entered under regulation and in connection with quarantines providing for the movement of the quarantined articles within our own country. The withdrawal of a permit or the license puts the man who violates the regulation out of business, and the knowledge that such withdrawal is possible is one of the most salutary things in maintaining compliance with the regulations. We have very few violations which are not subject to this form of control. The action by this method is prompt and there are no stale cases. There are a few cases, however, where prosecution is necessary, and these follow the normal course.

There are also questions that come up in connection with the ordinary administration of the Plant Quarantine Act, and regulations which are matters of some doubt perhaps as to authority in connection with trivial or unimportant cases; in other words, how much authority we have to waive regulations in the instance of trivial offenses. Many small importations are made by return travellers or other persons, who are entirely ignorant of the law, and these violations may be trivial in amount and involve no risk. There are a good many such matters which involve the necessity of leniency or of apparently waiving regulations, and we have been waiving regulations in minor ways and thus avoiding punishing the people who are guilty, but guilty through ignorance and not through intention. How much authority we have to waive regulations I don't know; probably none. But as long as it is all within ourselves, it seems to me a reasonable thing to do in the interests of that very point of view expressed by the Judge in his letter to you, that is, in not pushing to unreasonable prosecution in the case of these minor offenses.

MR. CAFFEY: And particularly while your law is new.

MR. MARLATT: And particularly while the law is new. We have issued rules to our collaborators throughout the country governing such cases, and I think they have worked very well. We are fortunate again in not dealing with a class of subjects which leads to a desire to violate. When you interfere with a man's sports, as in the shooting of game, or with things that have grown up, and are of long standing, as in the food and drugs business, it seems to lead to more of a tendency to violation; whereas, with the movement of an article which is itself rather cumbersome and large and which can't be conveyed from one part of the country to another, or introduced from abroad surreptitiously, and the value of which is slight, there isn't the same tendency to violation. As in the case of all other regulatory acts which involve entry from foreign countries, we have the cooperation of the Customs Service, and much of our control work in connection with the prohibitions of entry is effected through the Customs Service. But in the main, we have followed that principle that I announced at the outset, of providing for the penalty in the regulation itself. I think that plan has worked very well. It holds over the head of the person the fact of an immediate penalty, which may put him out of business, without waiting for court action. It is

an arbitrary power and a very great power, but if it is properly exercised, I think it is a good plan wherever it can be practiced. It avoids the cost of court action, and it is immediate.

MR. CAFFEY: Of course, they have that same situation under the virus act, and to some extent under the meat inspection act with reference to official establishments, terminating licenses and permits, that you have under the plant quarantine act.

MR. WILLIAMS: Well, the ground has been pretty well covered, Mr. Caffey, as to the attitude of the courts and the United States Attorneys. There is no question but that in most instances United States Attorneys hesitate to deal with a case where the witnesses have forgotten the main facts of the case, and where interest in the prosecution lags on account of its staleness; and there is no doubt that it is most desirable that cases be pushed with as much expedition as possible after the commission of the offense. In the case again of the game violations, it has been in the past somewhat difficult to discover these violations because we have to cooperate to a considerable extent with commission houses and it takes a long time to get commission houses to cooperate with us. When they do open up their books they show violations extending back as far as three years and when we get this information and we cannot secure recent cases, we prepare the cases for prosecution. The United States attorneys have not raised any serious objection in regard to the game cases. The courts have in their fines reflected their mental attitude. There is another matter which is not so important, that is the matter of the Department inducing a violation in order to institute a prosecution as a warning to others. I recall a case arising under the game laws of a man in Tampa, Florida, by the name of Jack in 1901 or 1902. We knew that birds, and birds on the verge of extinction, were being shot and their plumage sent to the North for millinery purposes and for other purposes that were about as trivial, but we could not get any direct evidence against that fellow by any investigation that we could make; so with the cooperation of the National Association of Audubon Societies, the Biological Survey decided to induce a shipment of the nearly extinct ivory-billed woodpecker, and that fall, Jack sent to the consignees named by the National Association, in New York, a shipment of these birds. The Government fixed up its case on that and the witnesses went down there from New York and elsewhere, The prosecution was instituted by information before Judge Boarman sitting in the place of Judge Lock. When the United States Attorney began to explain to the court, the judge was very impatient. When he found that it was a "woodpecker" case, he would not listen to the United States Attorney. He said, "I want to hear from the defendant," and he said it was worked up - that the Audubon Society and the Department had worked up a case against him. The judge was rather sympathetic. He thought the case was one that was induced by the people interested in the prosecution, and the result of it was that he fined the man $1.00 and suspended that fine and suspended costs. I may say that we do not make much impression with cases of that kind on that judge. It is probable that in most of the game cases, if we were to induce the violation, the result would be the same.

MR. CAFFEY: In that case did Jack quit shipping them?

MR. WILLIAMS: I am not sure. Dr. Palmer possibly can give us some information about that, but, in conclusion, I know it is a fact with some of the United States Attorneys, in former years in connection with the food and drug cases, that they did not like to prosecute a case that was old and one in which the witnesses had forgotten the essential facts in the case. The judge may think you have waited so long a time that the man and the witnesses had forgotten about it and we do not get anywhere. That is the general attitude.

MR. GWINN: Mr. Caffey, this matter of induced shipments has been mentioned several times and since there is nothing on the program in regard to it, I suppose it might as well be disposed of. I mentioned a case where there was an induced shipment and criticism of the Department by the court. In that case it was a sample of New York City water, Croton water, labeled "Imperial Spring Water"; but

there are cases in which shipments are very properly induced. I have in mind the cures for drug habits which are shipped by mail. We used to have a number of cases like that. They were not put in a box and shipped as most drugs. They would send out literature and tell their customers that they would cure the drug habit and it was a matter of difficulty to go over the United States and find people who are addicted to this drug habit. It might apply equally to shipments of cures for incurable diseases. We tried several of these cases and heard no criticism. It is a convenient way, and, if the facts are known to the court, I would not look for criticism, but criticism would probably come if the man is engaged in an innocent business--in intrastate business--and the Department induces him to violate the Federal statute in order to prosecute him.

DR. ALSBERG: I was going to raise the very question as Mr. Gwinn has just discussed and I think our attitude is the same on that question. Where a man does his business customarily through the mail, or if the shipping records are not available and the matter is serious, it might be justifiable to induce shipment. We, however, try to avoid bringing a case of that kind to court, if we possibly can. Our method at present is to bring the nature of the man's business to the attention of the postal authorities, because it is a violation, as a rule, of the postal law and can be handled very efficiently, and in many ways a great deal more effectively, by the Post Office than by us. We prosecute for misbranding, the manufacturer changes his labels and goes on with his business. They issue a fraud order and his business is gone. We are sending few of these to the Solicitor's Office because we are handling them through the postal authorities, who are very glad to take them up. With reference to the intrastate business referred to by Mr. Gwinn, we find that we can usually handle that by working in cooperation with the State authorities. We place the entire evidence before the State authorities and the State authorities usually take appropriate action, so that we accomplish what we could accomplish under the Federal Act without actually conducting any prosecution ourselves. Sometimes it is necessary to do more than to bring it to the attention of the State officials. We recently had a prosecution in which the case was called to the attention of the United States Attorney as being a violation of the Food and Drugs Act. Well, he did not think the evidence was sufficient for the United States Attorney to prosecute, but the evidence was sufficient to compel the State authorities to take cognizance of the case so that the abuses have been cured whether or not the indictment results favorably or not.

DR. PALMER: In regard to the case which was mentioned by Mr. Williams, the case does not end when the defendant is acquitted or convicted. Sometimes the after-effects may be very far-reaching. Mr. Williams did not mention the fact that this defendant came into court prepared to pay the maximum fine of $200. This he was not permitted to do. Two years after the Jack case was disposed of, I had occasion to meet the Governor of Florida who happened to know Jack, was quite a friend of his. Not knowing that I was familiar with the case, he brought the matter up and went over it with great detail and with considerable bitterness. I found somewhat to my surprise that the case had been entirely misconstrued, not only in the place where it was tried, but in the section of the country where Jack lived. At the time the offense was committed, there were four men who were engaged in this sort of traffic. If the court had imposed a reasonable fine, the whole thing would have stopped, but with the imposition of a dollar fine and the feeling that it was persecution and not prosecution, the after-effects were such that I doubt very much if we could have gotten another conviction in a similar case in that section of the country for some months or for several years. The outcome of that case was a mistake on the basis of results, but not a mistake on what we had reason to expect. We should always bear in mind the ultimate effects of those cases even beyond the actual action of the court.

DR. SHORE: Mr. Chairman, the virus law, as the speaker said a few moments ago, is also comparatively new. There is no penalty, I believe, in the law for a violation of the regulation. However, we have prosecuted a number of cases of violations of the law where

virus, serum, toxin, whatever it may be, has been shipped interstate by a party not having a license, and the defendants have pleaded guilty in these cases. The courts have imposed what we think is a nominal fine in nearly all cases, ranging from $10 to $25. On one or two of the defendants it has after all been quite a punishment, because there were a number of counts in the indictment. We have some cases pending now where a product has been worthless or contaminated within the meaning of the law, and one of those is a case of induced shipment. It was a product which had been one of the frauds of long standing. However, it was a product which couldn't be obtained on the market regularly. I wouldn't know where to send a man to get a sample of this product. So, for the protection of the people, we took steps to get a sample, and when we secured it, found it was in fact worthless as it had been reported, and it has been referred to the Attorney General now. I am very much interested in that case because it was a case of induced shipment, and we have another similar one coming. I am sorry that I can't say just what the attitude of the court has been, other than by inference, referring to the size of the fine that the court has imposed. So far, none of our cases have come before a jury. The defendants have always pleaded guilty and the fines have been imposed by the court.

MR. WILLIAMS: I want to mention a food and drugs case to show that the Judge, on account of his lack of sympathy with the case, went far afield in his legal decision. My recollection is that he perhaps erred in his statement of the law because he felt that the case was an unsubstantial one, and he wanted to find some legal ground upon which to decide it adversely to the Government. That was a case against 65 casks of Danderine that were shipped from Detroit by Parke, Davis & Company, for the Danderine people down at Wheeling, and they were shipped in these big casks. Those casks were put into a car and shipped on down to Wheeling without any marks on them to show the quantity of alcohol in the casks. The fact was stipulated that after the casks got to Wheeling, the Danderine people there took the stuff out and put it into little bottles and put a label on the bottle, showing the accurate and true alcohol content. It is true the case involved some constitutional questions, and the Judge decided the constitutional questions favorably to us, but his whole opinion is full of evidence that he was seeking some kind of a legal excuse for letting these Danderine people out of that thing because it was such an unsubstantial offense. That was long ago. That was back in 1909 I think. But that just reflects the attitude of the judges on these unsubstantial cases.

MR. GODING: Mr. Boyle covered the ground that I was going to cover. He spoke of that two-cent fine case, and I don't think I can add to what he said.

DR. EMERSON: I don't think that I can add anything at this time, but when we come to the last two items on the disposition of these cases, I want to say something.

MR. GATES: What little I have to say has also been covered pretty well by Dr. Haywood and Dr. Alsberg. One of my duties is to look after the Insecticide Act in the Solicitor's Office. The Insecticide Act is a prototype of the Food and Drugs Act. Insecticides are defined by the act as substances for use against all insects in any environment whatever; likewise, fungicides are defined as substances for use against fungi which are present in any environment whatsoever. I might also say that, inasmuch as bacteria are a class of fungi, the act is construed to apply to bactericides, disinfectants, etc. With reference to the first point, unsubstantial and stale prosecutions, I might say that there has been no mention of staleness or unsubstantial features in any cases which have been adjudicated in the courts. These features are frequently the bases of representations made on behalf of defendants directly to the Department or through the United States Attorneys in excuse or extenuation in cases pending in the courts. In many instances they are not well founded, in which case the Department takes the opportunity to refute the representations. In only one instance that I recall has either of these matters been mentioned by the court. That was in a case a year or more ago, in the jurisdiction of Mary-

land. The issue was the alleged false and misleading purport of the name of a certain product. The case having ended in a verdict for the government after a hard fight of two or three days, the Judge, being rather a long-headed man and using a good deal of common sense, with an eye on the construction aspect of the case, called all the parties interested into his chamber in order to determine upon a name which could be properly adopted for the product, and we arrived at an adjudication of the matter in a manner which was more or less satisfactory to all parties. The Judge detained me after the conference had ended and impressed on me in an informal way the great importance in the proper enforcement of such statutes at the very beginning--this act is comparatively young yet, having been passed in April 26, 1910, taking effect January 1, 1911, and its enforcement begun with the year 1912. He referred to his experience with cases under the Food and Drugs Act, and showed how under the Insecticide Act it was highly important that especially at the outset that only substantial violations and violations that were false and fraudulent in intent or effect, should be reported by the Department for prosecution. He mentioned the effect it had on the attitude of prosecuting officers and judges. I believe I reported to the Solicitor the purport of this conversation when I came back. Though, as I have said, there has been no formal statement of a court on this point in any case under the Insecticide Act, yet the minimum fines that have been imposed in many cases, I think, reflects the fact that this thought does influence judges in imposing fines, and also the efforts of United States Attorneys in prosecution. And we reach the courts mainly through the United States Attorneys, so when we impress the United States Attorney, we, to a large extent, indirectly impress the court. As the enforcement of the Insecticide Act has progressed, there has been a growing tendency in reporting cases for prosecution to discriminate the more serious from the less serious and to reduce the time between the commission of the offense and the recommendation for prosecution, and there has been a corresponding improvement in the promptness with which such cases have been prosecuted and an increase in the average fine imposed. Trifling fines, however, have been imposed in many good, substantial cases, and the trail is strewn with the skeletons of $5 and $10 fines for violations which were once perfectly robust cases, deserving of substantial penalties.

DR. ELLENBERGER: Regarding the trivial or unsubstantial cases, occasionally we issue a new regulation covering a new subject and the cases are submitted by the inspectors in the field before there has been sufficient time for the railroads to inform their agents fully of these new regulations. These are violations that have not been submitted for prosecution. We have communicated with the railroad companies and the shippers so that they may become informed. Another thing that comes to me is the question of who shall decide as to whether certain reports should or should not be submitted for prosecution. Should those receiving the reports--the administrative force--do it, or should it be taken up with the Solicitor's office? I have often wondered about that.

DR. ALSBERG: The delay in the enforcement of these cases--the delayed cases that Mr. Gwinn read to you were all Sherley Amendment cases--the delay was due to the fact that this was a new statute. The Sherley Amendment went into effect a few months before I came into the Bureau and my policies in regard to the Sherley Amendment were entirely different from those of the man who had charge before I came into the Bureau. These had to filter down through all the men who were concerned in the enforcement and we had to delay the enforcement of these cases.

MR. CAFFEY: I am glad you brought that up now, and we ought to discuss it fully. Mr. Bancroft.

MR. BANCROFT: The ground has been covered very well by Dr. Palmer and Mr. Williams, and I cannot say anything in addition.

MR. CAFFEY: Mr. Lees.

MR. LEES: My work is in connection with the cases involving violations of the laws and regulations relating to the National Forests and more recently under the Plant Quarantine Act. As Mr. Squire said we have very little trouble with the Forest Service cases on account of delay. For those not familiar with the Forest Service work, I might say that the Forest officers have authority to arrest for violation of the laws and regulations, and in the case of criminal violations where immediate action is necessary they arrest the offender either under a warrant or without a warrant, where he has committed any important offense and in that way the case is disposed of very quickly. We had a case which came up when I was in Ogden last summer. A man was driving a prairie schooner through the National Forest, had an accident, and cut thirty feet of wire from a telephone line. The Forest officer discovered it and got on his trail, procured a warrant, and succeeded in finding him although the United States Marshal could not locate him. The Forest officer took him before the United States Commissioner and he pleaded guilty. He was placed under bond and was fined $50 and costs at the next term of court. By prompt action the case was disposed of within two or three months, about two months, I believe. If, on the other hand, it had to wait its turn coming up in the Department here and the Department of Justice, we would probably have not succeeded in disposing of it so quickly. There was another case which was disposed of very speedily. Similar action was taken and the defendant was fined $50. That is about the way they handle these cases. In the civil cases, which involve claims of the Department for timber, fire, and grazing trespasses, these frequently come up when forest officers are engaged in keeping the forests clear of fires and we leave them until the forest fire season is over, but on the whole they move promptly. In the matter of criminal offenses it is often necessary to take all these into court for the effect that it has on others. I recall one case, a fire trespass. Some parties were out on a camping trip in one of the forests in California. They had been pretty careful, but the last fire they left burning. The Forest officer put it out. No damage was done except the danger of spreading. These parties were immediately arrested and although two of them were minors, the court, a justice of the peace, fined the responsible party, a minor, fifty dollars. The forest officers were loath to take that case into court, but it was necessary to absolutely impress upon people using the forests the necessity of using care in preventing fires. I remember one other case, a grazing trespass, the parties did not think the Federal Government had any authority to control grazing on the forests. They consulted a local attorney who spent most of his time sitting on a dry goods box and was not aware of the decision of the Supreme Court in what is known as the Light case. He said the Government had no jurisdiction in the matter. We finally referred it to the Department of Justice. The defendants employed other counsel. After the decision of the Supreme Court was called to their attention, they made settlement. That was not a very important case but it could not have been settled otherwise.

A more recent case, a woman out in Oregon was grazing cattle on the forest without permission. Efforts to obtain a settlement failed and we took that into court or rather referred it to the United States Attorney. These are minor cases but we have to have settlement and sometimes that is the only way we can do it.

Under the plant quarantine act we have had very little experience. We received a letter from the United States Attorney in regard to the case in which a shipper shipped deciduous nursery stock in violation of the regulations. The defendant filed a demurrer to the information on the ground that deciduous nursery stock is not named in the Statute or regulation and the court, evidently not thinking much of the case, sustained the demurrer. Probably the United States Attorney did not know much about it. We wrote him a letter that while the statute did not specifically name deciduous nursery stock, the article shipped fell within that general classification. He wrote back that he would be pleased to file an amended complaint and would keep us advised. I have no doubt that he will take it up and get the proper results. With regard to induced

violation, I recall reading recently--within two or three months--of a case in which one of the immigration officials induced a Chinese merchant in San Francisco to bring some Chinese from Mexico into California and the court, in a published opinion, held that it was not an offense against the statute because it was purely induced. I think they were not able in that case to show any other offense by that merchant or anything against him in general and that probably influenced the court in the action it took, but the court was very emphatic in its decision. I suppose where the parties have been offending and it is impossible to get the evidence otherwise, it would probably be permitted as in the case of decoy letters used by the Post Office inspectors.

On the question of enforcing the regulations it seems to me that the administrative officers are allowed a good deal of discretion in the matter. They need not report all offenses committed. In one of the District offices of the Forest Service, they have decided that they won't take up small cases involving damage to the extent of $2 or $3, because it is not worth while to go into court with it and in fact it would be injurious to them, so they simply ignore them if they are not able to obtain a settlement.

MR. CAFFEY: Mr. Shibley?

MR. SHIBLEY: So far as the Insecticide Act is concerned, I think Dr. Haywood and Mr. Gates covered the subject very well. I am interested primarily in devising a scheme to eliminate the factors which cause cases to become stale.

DR. SMITH: With regard to the meat inspection law, we found out some time ago that the courts did not look with favor on prosecutions for these minor offenses, and since that time it has been the policy of the Meat Inspection Division to look over these various violations and see if there was merit in them sufficient to report them to your office. As a rule, we take up the minor offenses by letter to the offender and anything that is of any account we refer to your office. We have found that in practically all the cases we take up by letter the violation of the regulations is discontinued. In fact, we never hear of them again. Concerning the delay in getting the evidence ready for prosecution, I don't think that there is very much delay connected with our evidence, as our own men collect all the evidence and we usually have it ready within five or six weeks.

MR. CAFFEY: Gentlemen, I think that in discussing this subject "The attitude of the courts towards unsubstantial and stale prosecutions" - in order to get it fully before our minds - we have had to go somewhat into side issues and we have not confined ourselves absolutely to that first subject. I do not think that is an objection. This is the beginning of the conference and it does not make very much different as to the order in which we discuss these suggestions. The only purpose was to have some kind of memorandum so that we would discuss pretty nearly everything. I think the discussion has been very helpful and enlightening. I know that it has been to me. We are only laying the promise in discussing the court's attitude, so that in the latter part we can more intelligently consider our own particular problems. As I said, it is obvious to us all that we must use this human institution, the court, when we have to seek the enforcement of these laws by coming into litigation, or where we are compelled by the laws to bring offenses to the attention of the Department of Justice. Until we have thoroughly in our minds just what the attitude of the court is, we cannot properly discuss our own problems. Now, I think the general feeling was that we had better not have any afternoon session. If agreeable, I suggest that we adjourn to 10 o'clock tomorrow.

Session of February 23, 1916.

Topic II.

The function of the United States Attorney as, in the last analysis, the sole representative of the Government in presenting to the court cases arising under the regulatory laws.

MR. WILLIAMS: Gentlemen, I am very sorry to state that Mr. Caffey is unable to be here this morning because he was called before one of the committees of Congress at half past nine. He hopes very much to be here later in the day. He was greatly pleased with the course things took yesterday and thinks that we really did accomplished a good deal. He is very much interested in this conference and hopes to be present the remainder of the time. Now, we may proceed to the second question on the schedule unless someone suggests a different order for consideration of the meeting, and I think that second question needs some little explanation, to give you the point of view of the Solicitor in regard to the matter. Of course, we are depending upon the United States Attorneys to present to the courts our cases. The United States Attorney is the sole representative of the Government before the court, and unless the United States Attorney is thoroughly in sympathy with, and understands the case that he is to present to the court, he cannot perform the best service for the Department. The idea of the question is that the United States Attorneys should be furnished with a case that is so well worked up, free from every scientific technicality possible, that he may be able intelligently to present the matter in simple form to the court and to the jury. Frequently the United States Attorneys never get into sympathy with our cases, or some of them because they do not understand them. The purpose of this discussion on this #2 is to lay down in these minutes such suggestions as we may severally have regarding the manner in which we should prepare the cases so the United States Attorneys may understand them. Now, Mr. Henderson has discussed the matter in conference over at the Solicotor's office in regard to his branch of the work, the Food and Drugs Act, and I am going to ask Mr. Henderson to give us the benefit of his views on this second subject.

MR. HENDERSON: Mr. Chairman, the outline really touches the principal points that are involved. Inasmuch as the United States Attorney is the one who represents the Government at the trial, I think it is important, first, that he have an interest in the case, and so far as the Food and Drugs Act is concerned, that interest is likely to exist, especially if the case is substantial and not too old. Most of the United States Attorneys are very anxious to prosecute our cases for us vigorously, particularly if they find they have a real live case and a verdict can be obtained. They do not like to throw a case away. They do not care to prosecute where the case is not substantial - either purely academic or where the evil has been corrected long ago. This is particularly true, we find, with United States Attorneys in Food and Drug cases. Of course that may not be true in all other cases. There are some other prosecutions that are not at all like those under the Food and Drugs Act. There, so far as the legitimate business house is concerned, United States Attorneys are loath to prosecute if the practice is more or less inadvertent and has been long since discontinued. In other words, when the case is old or insubstantial, and whether the case is substantial often depends upon the age and other circumstances and not upon the extent to which the law is violated.

The second point is one the importance of which is easily overlooked, that is telling the United States Attorney all about the case. The person preparing the case knows so much about the subject that he is apt to take it for granted that everybody else knows as much as he does. The Solicitor's office does not know so much and the United States Attorney knows less. If we do not tell him, he is not in the best position to prosecute. He cannot look at it from our view point. He cannot take the same interest and often does not take the same interest. It occurs to me that we should keep on the

track we are on now of sending up strong cases based on recent violations of the law, so far as the Food and Drugs Act is concerned; and that, where there are any circumstances concerning the violation or showing its relation to business in general, the importance of prosecuting this case, the extent of the practice involved, or any other material facts, we should pass them along to the United States Attorney. Otherwise he is in the dark on matters concerning which we have a good deal of information.

MR. WILLIAMS: Now that we are on this subject, I might mention this phase of it. We have, particularly in the Bureau of Animal Industry and in the Biological Survey, inspectors that are traveling around the country and procuring facts. In some of the Bureau of Animal Industry work, there is no question of chemical analysis or anything of any scientific work, simply a question of collecting facts. Now, the man who collects the facts, in other words the inspector who finds the violation committed, should put himself in the place of the United States Attorney w ho has to present this case to the court. He should collect the evidence from the standpoint of what the United States Attorney has to do when he brings the case into court. In other words he ought to be so well instructed by his Bureau that he will know what are the facts that have to be developed at the trial, and how they can be proven. Therefore, he should procure every particle of evidence that is obtainable, no matter how trivial he may think it is, to submit along with his case. If he gets too much, it can be eliminated. If he does not get enough, it is too late when it gets to the United States Attorney to procure any more. I thought we might discuss this subject here, first from the standpoint of the inspector who is traveling around the country procuring evidence of the violations of our various regulatory laws, and I think that we probably can get some information from Mr. Raub. Mr. Raub, will you give us the benefit of your observations and experiences in connection with the 28 hour law?

MR. RAUB: Mr. Chairman, in coming in contact with District Attorneys my experience has been that some of them are interested and some of them are not; but the nature of our cases under the 28 hour law is such that they appeal to the District Attorney if the evidence is such that he sees on the face of it that there has been a violation. The fact that the animals were confined for a period of 36 hours without feed, water, or rest in itself appeals to the District Attorney, the judge and the jury. It narrows down to this, that the evidence that the animal was confined for that period without feed, water, and rest is all that is necessary. In the collection of the evidence I have found it necessary to travel over the route over which shipment was made, visit the feeding stations, and determine from the records of the company that the animal had not been properly handled en route. When this evidence has been collected and put before the District Attorney in such a manner that it is clear to him, we have not had any trouble at all in getting him to go ahead with the case, and when a clear case is presented it is without question that we will get a fine of at least - the minimum of $100. I might cite an instance of one District Attorney with whom we had a case involving what he called a technicality. There was a confinement beyond the statutory period, but he laid the case on the shelf. Where was a change in politics and with it another District Attorney who took up the case again. It was no stronger, but it appealed to him, and he prosecuted it and got a $500 fine. The first man said there was no reason for prosecuting it. I believe that our 28 hour cases are just a little bit different from the other cases of violations occuring under the different Bureaus, and I think that where we have a violation we have no trouble to get the attention of the court or district attorney. It appeals to them at once. There are none of the technicalities, none of the little things which enter into other cases. We are at present doing a great deal of the work of collecting evidence through the mail instead of sending an inspector out over the route traveled. We find it narrows itself down to a question of fact.

MR. WILLIAMS: Have you found, Mr. Raub, under your system,

that the United States Attorneys in the trial of the 28 hour cases, are pretty well satisfied with the way cases are presented to them?

MR. RAUB: Some cases were presented in a very meager form; nothing but an F. I. Form 59, which is the form for reporting cases. The present system, however, presents the case in a complete and satisfactory manner. It was necessary, in the Central Part of New York, for one of the Bureau Inspectors to confer with the District Attorney and prompt him as he did not know a thing regarding the 28 hour law it being the first case he had, and he was not very much interested in it. There was a postponement but he afterwards had the case brought before the court and secured a judgment for the Government.

MR. WILLIAMS: A large part of the evidence in your 28 hour cases is written evidence such as records of the transportation companies.

MR. RAUB: It is if it is purely a violation as to time, and the records of the railroads handling this particular car from origin to destination show that the time limit has been exceeded. We have, however, cases where, according to notation on the billing, the animals have been fed and watered en route, whereas, as a matter of fact, they have not received such attention.

MR. WILLIAMS: The 28 hour law makes it a defense if the carriers can show that there was some unavoidable circumstances that prevented their unloading the cattle within 28 or 36 hours. What effort do your inspectors make to see, when they make up your case, that there were no such excusable circumstances.

MR. RAUB: In the forwarding of most of the reports I would say that probably no effort had been made. That has been left to the defense of the railroad. We take that view, as the railroads have, as a rule, settled cases without bringing up that point, as there is seldom a case of that nature reported. It is a considerable cost to send an inspector to stop at every point where that car has been, to get information of that nature. We are inaugurating a system by which the car is checked from the point of last feeding, or the points between which the violation is alleged to have occurred to see if there was any delay occurring between these points. We do this now by securing through correspondence if possible a copy of the car movement report of the railroad company, which in itself will show if there was delay. In a number of cases I have gone to the car accountant's office for such records. For instance, when we took up the Lake Shore matter, I went to the Railroad company's office and went through the delay reports and wheel reports and found that there was no delay that would be allowed under the law. Where there was delay, it was not such that we would take cognizance of as relieving the carrier from prosecution. We are trying to check all cases reported as alleged violations through correspondence with the railroad companies and bureau stations.

MR. WILLIAMS: Dr. Alsberg, will you give us the benefit of your views on the subject?

DR. ALSBERG: I don't know as I have very much to add to what Mr. Henderson said. There are only two ideas that have occurred to me in connection with the coaching of the United States Attorney--because that is what has been done in most of our cases--and that is that perhaps it might be worth while to put in the first document that would greet the United States Attorney's eyes when he opened the file a summary in words of one syllable, written with great care, of the facts in the case, the significance of those facts, and the evidence that the Department was in a position to bring. That isn't done at present, is it Mr. Henderson?

MR. HENDERSON: No.

DR. ALSBERG: I have always felt that that would be a good thing. I don't know how it would work. Sometimes I don't believe

the United States Attorney reads the case until he picks it up ten minutes before he goes into court, and I don't know but what sometimes he reads the case in court for the first time. I don't know whether such a simple history of the case would be of much assistance. It might be tried. The other point is I am quite certain that in our cases at any rate, and I believe the same holds true for the Insecticide work, the coaching should be done, or in a large measure be done by a chemist or bacteriologist as the case may be, who shall take the matter up personally with the United States Attorney just before the case is to be presented to help in the trial. I think that is essential. It is also well for a representative from the Department or the Solicitor's office to be present in those cases. I don't believe it is desirable to have a different chemist at different times, nor a different attorney at different times. I think that the work could be much facilitated if the Department of Justice had such a man rather than the Department of Agriculture. I should think it would be of great help if, instead of having these cases tried by the United States Attorney, the Department of Justice had a special agent who actually did the trying. I don't think there is any possibility of arranging that. I don't think that it can be done. As for having our inspectors communicate directly with the United States Attorneys, I think that is entirely practicable. But the question might be raised that the inspectors might be the agents who coached the United States Attorneys.

MR. WILLIAMS: No, I didn't mean that at all.

DR. ALSBERG: Well, it wouldn't be in our case because our inspectors get the attitude of inspectors, and their point is to make the case stick. Whether it is made to stick by means provided in the law, or by other means, worries them not very greatly. By which I don't mean to imply that they do an injustice. They Don't. They want results. Whenever they think a man ought to be prosecuted, very rarely in my experience is it that the man doesn't deserve prosecution. But deserving prosecution, and having a case which will hold in court, are two different propositions. We have constantly to remind our inspectors that it isn't sufficient to find that a given party is doing crooked work. They have got to supply with it sufficient evidence. Of course, they don't always understand that. What they see is the crooked work, and they don't always see that there are things in the law or court practice which aren't provided for by law.

MR. WILLIAMS: The idea I had in mind about the inspectors was this: That the inspector, when he goes out in the field on his work, should bear in mind that he is procuring evidence to be subsequently used in court in the prosecution of the case by the United States Attorney, and that he should put himself in the position of the United States Attorney who is to try the case and therefore procure that evidence that he knows will be essential for the United States Attorney to produce at the trial. I didn't mean to suggest----

DR. ALSBERG: I understand that, Mr. Williams. I don't think we expect that of our inspectors. I think, however, it is expecting more than it is in human nature to do, because it is just the same thing to expect that the United States Attorney will have the same attitude of mind that the Judge on the bench has. He never has. Perhaps it isn't right that he should have, I don't know. But our inspectors want to get cases that stick, and in their enthusiasm they can't always put themselves in the frame of mind of the Bureau or the Solicitor's office or the United States Attorney any more than the United States Attorney puts himself into the frame of mind of the Judge on the bench. The United States Attorney is a partisan in these cases. Our inspectors are still more so. Probably they would not be efficient inspectors if they were not.

DR. HAYWOOD: I haven't very much to add to what Dr. Alsberg said. I think that the one thing that we want to do more than we have done under the Insecticide Act, as I said yesterday, is to have more instruction of the United States Attorney by members of the Department, perhaps a member of the Solicitor's office and also a

chemist and other scientists, as the case may be, from the Insecticide Board, and tell the United States Attorney not only how the law has been violated according to the views of the Department, but also what is the practical result of the violation of the law. I think that that is where the United States Attorney is oftentimes at fault. I will give you an example under the Insecticide Act. It is a very common thing for us to bring a case because the manufacturer of a Bordeaux label says that he has so much copper, and he has half that amount. Well, having half that amount doesn't seem a bad violation to the United States Attorney, but when it is explained to him that the mixture possessing the guaranteed composition, when used in accordance with the directions on the label, will result in killing the fungi, while the mixture at half the copper strength will not kill the fungi; and that the purchaser loses his crop in consequence of this, then it is immediately obvious to him why the case is an important one. I think with these practical points explained to the United States Attorney, that the cases would be handled a good deal better by them. I do also think that we may offer this aid to some United States Attorneys and they don't seem to want to accept it. There are a good many cases in which we have offered to give this aid, and we never heard from the United States Attorneys that they would like to have our help. I don't know exactly how we can insist on it unless the United States Attorney says something about liking to have the Department men come. That would be a matter that perhaps, through the channels of diplomacy, your office could arrange with the Department of Justice so that any help this office offered the United States Attorney would be accepted.

MR. WILLIAMS: Has it been your experience or observation, Doctor, that there are any United States Attorneys who are loath to listen to an explanation of your cases prior to the time of the trial?

DR. HAYWOOD: We have had numbers of cases in which we have thought that we ought to have somebody there to explain it to the United States Attorney. I have written that fact to the Solicitor's office, and I feel reasonably sure that the Solicitor's office, in writing to the United States Attorney, said "We will be glad to explain this case to you further before the trial," but in a number of such cases, the United States Attorney has never accepted our proffer of aid.

DR. ALSBERG: I think that what Dr. Haywood says is perfectly correct and to the point. One of the troubles of the Food and Drugs Act that arose out of this confusion that I mentioned yesterday is this: The United States Attorney will charge in the information that this honey is adulterated. The United States Attorney expects to find out that this is some diabolical mess, that it is going to kill people. Then he finds out it is perfectly wholesome, and he says, "Oh shucks, this doesn't amount to anything." If we could get at him and explain that what it meant was a matter of unfair competition--that happens to be a popular phrase today--and that the man who would sell this product without proper labeling would simply put out of business all his honest competitors, then I think we could make an appeal to the United States Attorney to show him what the significance of the case was. I don't see any reason why that sort of thing should not be in a little abstract to go at the beginning of the papers which I discussed before. Then we have a chance, as Dr. Haywood says, that he will read it.

MR. HENDERSON: That subject of Dr. Alsberg's, I am not certain that the best time to do it is when we send up the case. Maybe it is. It would depend on the United States Attorney, how he handles the case and looks after it. I have had quite a lot of experience with United States Attorneys in the West, and some of them keep with the files of the case merely the pleadings. The correspondence is filed under the name of the man that wrote the letters. If it is signed by Mr. Williams as Acting Solicitor, it would be under "W." If it was signed by Mr. Caffey, it would be under "C." To go there to find out something about a case in the correspondence is difficult. That might not be true generally. I don't believe it is. I think that was probably true with some United States Attorneys in the past who did

not have a good filing system. It is true, however, that often they don't take the cases up and consider them very carefully until they are about to be tried. We might have something to go along with the case to attract his attention. Then follow that up with a letter, perhaps, when the case was going to be set and tell him all about it.

DR. ALSBERG: I think that that would be better if we knew when the case was going to be set. That brings up a sore point, as far as I am concerned. A case was set last Wednesday. We had an expensive witness come to New Kork where the case was to be tried last Friday. He was not an employee of the Bureau any longer, and several other very expensive witnesses, experts, a hundred dollars a day, and that sort of thing. The case was postponed. This postponement will probably cost us some hundreds of dollars. I recall a year and a half ago that we sent five or six men to Portland, Oregon--one or two of them had to be sent all the way from Washington--to be there on a certain dah to try a certain case. They cooled their heels in Portland for a fortnight; nothing to do. If we had been told that the case was postponed for a fortnight, we would have ordered them to Seattle where we have a laboratory and set them to work; but the case was going to be tried the next day, and the next day, and they just sat around in the hotel corridors to be on telephone call when the case was to come up. That probably cost us $600 or $700, holding those men there. Some of them were Bureau men, and some of them were experts from elsewhere that we had to pay. While I think Mr. Henderson's suggestion that such an abstact with the description of the case had better be sent just before the cases come to trial is a good one, even that isn't a perfect method, because if we expect the case to come to trial today and write a paper for the United States Attorney so he has it the day before it comes to trial, and the trial is then postponed two or three weeks, he has forgotten all about it. Perhaps we can get around it by keeping on sending copies to reach him before the case is expected to be tried until it is actually tried. If something could be done so that we wouldn't send our witnesses to a given point on a day fixed unless that was the actual day wnen the case was to be tried, it would enormously facilitate the work of the Bureau and probably save us five, ten, fifteen, I don't know, possibly twenty thousand dollars a year. I am not quite certain what the sum would be, but it would be certainly five thousand dollars, and it might be twenty thousand dollars. I have never put the figures together to find out how much it would amount to. I have been told by all the attorneys that that isn't feasible. I simply raise the question here because I think it applies under this head.

DR. HAYWOOD: I want to say just a word about this. We had a case under the Insecticide Act in New Jersey. We had to send ten men on this case - entomologists, chemists, plant pathologists, and bacteriologists. It was the day after Washington's Birthday. A telegram came on Washington's Birthday and, needless to say, we did not get it in time to stop the witnesses. All ten of them were there at the trial. It was put off and we were put to considerable expense. Not only is that true of our work, but in the work coming under the Food and Drugs Act. One of my men, a certain chemist, went out on a feed case. Promptly when he reported to the United States Attorney, the trial was put off, and he came back again. When I had to do with the enforcement of the Food and Drugs Act in the case of waters, a crowd of us went to Syracuse and waited for almost three weeks. We were not allowed to leave town and come back to Washington. Some were experts drawing large salaries. It cost a lot of money. I realize that judges are very independent individuals; but it does seem that it could be at least hinted to them that they might save the Government a good deal of money by paying some attention to this matter, and seeing if they could not take some steps to avoid a good many cases of this sort.

DR. ALSBERG: I once suggested to the Solicotor a remedy, or a partial remedy, and that was this, that arrangement be made that all these fees be paid by the Department of Justice. If the Department of Justice had the paying of the expenses, and had to curtail

some of their other work, if they wasted money, it might be an incentive for them to see that this waste did not go on. I do not know how that could be brought about or anything about it, but the Solicitor thought that it was impracticable. I think that possibly the appropriation for the Food and Drugs Act might be somewhat reduced and a corresponding sum appropriated for the Department of Justice. If there was anything of this kind and the fund was not sufficient, the Department of Justice would make up the deficit out of other funds. In other words, put the burden on the Department of Justice to practice economy. I do not know whether that is practicable or not.

MR. WILLIAMS: The remarks of Dr. Alsberg, Dr. Haywood, and Mr. Henderson suggest that there ought to be some way to remedy this waste of public funds. I am not altogether certain but that the matter may not be brought with propriety to the attention of the District Judges. We are all serving the same government and the spirit that animates us should be to save the government as much money as possible. Doctor, have you ever talked with Mr. Caffey about that phase of the matter?

DR. ALSBERG: Well, Mr. Williams, I explained the situation to Mr. Caffey, but I have not suggested to him that it ought to be taken up with the District Judges. I did not know if it was proper to do anything like that. Dealings with the bench are somewhat different and wrapped up in various forms of medieval formalities. I did not like to make such a request.

MR. HENDERSON: It is difficult to draw any conclusion from general statements of what happened in cases. Now, that matter at Syracuse looks as if it was entirely unnecessary and senseless, but the mere fact that some witnesses go somewhere and come back without accomplishing anything does not mean that it could have been avoided. Sometimes the defendent pleads guilty. A lot of people are antagonized over that, but you can not help it if he pleads guilty. You cannot try the case, sometimes, because he is granted a continuance. We cannot quarrel about that. You cannot point anything like that out to the judge. Some continuances are necessary. The United States Attorney does not want the court to disapprove their action. The courts insist that the United States Attorney be ready to go on with the case no matter what happens to one or two ahead of it. In the West we frequently had to sit around there, and the United States Attorney would not let the witnesses go out to see the sights of the city for fear that some case might break down and he would not have any case to put on. Where we have a large number of high priced experts, it might not be hard to set the case down for a day certain, even if his docket broke down. It might be better for him to have nothing to do for a half day than to have the Government spend a thousand dollars waiting for him. Probably a third of the cases are along that line.

DR. ALSBERG: I have no doubt that in the majority of cases, we cannot help the delay and cannot cut down. Nobody can quarrel with the expense of sending witnesses expecting a hard contest and have the defendent plead guilty. There was no object in sending the witnesses if it was known before, but it is a matter that cannot be avoided. I am certainly firmly convinced that several thousands - how many I cannot say without spending a good deal of time on the Bureau's accounts - are spent every year in sending witnesses in large numbers, some of whom are highly paid experts, to court, to have a motion by the defendent allowed which cannot be avoided. If he has good reason for delay, he is entitled to it, no matter what the cost to the Government is. Where another case lasts longer or something of that kind happens, that can be avoided sometimes. Where this is not a matter of continuance, you cannot help it. I know of one case in which the judge in question had a death in his family and adjourned court. It was a Friday afternoon and he took Saturday off and did not return until Monday. Our men were held there three days instead of one. Some of them were expensive expert witnesses. That could not be avoided. Even allowing for all these, I am quite sure there are a number of cases in which there is

a waste of funds. The case that Dr. Haywood mentioned - the same thing happened in our case last Wednesday. It ought to be possible to get notice to us before the witnesses start. Sometimes we can stop them half way on the train. We have a feeling that there is no serious effort being made by the Court and United States Attorney's offices to conserve Government funds in this particular.

DR. ELLENBERGER: Regarding the collection of evidence, particularly in our quarantine cases, the inspectors collect this evidence incidentally to their other duties. The collection of evidence is a very small part of their work. I think as a rule they probably do not know what evidence is. Many submit facts but do not appreciate what what evidence is really necessary. In line with what was said, it might be well to get up a list of questions or statements of some kind to enlighten them on the subject. Then, we have a certain class of cases, for instance, violations in the movement of diseased animals from territories not quanantined. In such cases it is very difficult to get evidence. This is not satisfactory, for the reason that you have to prove that these shippers knew that the animal was diseased. We cannot make an inspector of him. He will say that he did not know. In some cases, I have investigated shipments of that kind and have gone to the farmer who sold the animals and he says "Yes, I sold those sheep to the shipper at less than the market value because they were diseased." Then I would get a written statement from him to that effect and, go to court, and the same farmer on the stand would say "I don't remember anything about it. I don't remember if I made such a statement," or "Yes, I did, but I was mistaken." That class of cases it is simply useless to spend money on. If the territory is quarantined, we simply have to prove the movement of the animals in violation of the regulations.

MR. WILLIAMS: The idea, however, in my mind is that our inspector knows that in order to maintain a prosecution under that Act of 1884, you have to show knowledge on the part of the man that shipped the diseased cow.

DR. ELLENBERGER: If it is from territory not specially quarantined.

MR. WILLIAMS: The inspector, knowing that the United States Attorney must show the court that the shipper had knowledge, the idea is that, he should procure all the evidence that he knows would be required to convince an ordinary reasonable man of the fact that this shipper had knowledge. Now, the inspector ought to get the evidence that he knows, or ought to know, would be essential to prove that knowledge, in order that the United States Attorney when he picks up the papers in the case will know how he is going to prove guilty knowledge. That is what I mean by saying that the inspector should throw himself into the shoes of the United States Attorney before the court. Now, I want to ask this question, doctor, have you ever had a meeting of your inspectors where you have discussed the matter of procuring evidence and the methods employed?

DR. ELLENBERGER: No, sir, we have not, for the reason that the inspectors are scattered over such a large area and there is such a very small percentage of these violations. It is very insignificant compared with their other work. That has not been done. Of course, on the other hand, at market centers like Buffalo, National Stock Yards, and Chicago, in connection with the 28-hour cases, these men know. They have had occasion to know - they understand what is necessary; but out in the field, these fellows who are doing this incidentally to their regular work, probably one case in a year, and some of them are new men - they do not know just what is necessary; and for that reason I think that the information, as you suggested, outlining what is necessary in the way of evidence, would help very much.

MR. WILLIAMS: I think Mr. Squire can tell us a good deal about the system in the Forest Service which appears from my experience to be very effective indeed.

MR. SQUIRE: Mr. Chairman, we found out many years ago that we couldn't trust our rangers to make a report that would be of any assistance whatever to the officers of the Government. Some sort of a trespass will take place, and the rangers after worrying about for a month or so, reports all sorts of stuff in a paper but what was needed. So we devised a form of report making certain questions which he had to answer, and the result has been extremely satisfactory. We get from him a report that in almost every instance is entirely satisfactory. It is our practice, whenever we get a statement from a person, to swear him if possible, and nine times out of ten they would make sworn statements, and we have no difficulty then in his coming back later on and saying that he didn't say it.

DR. PALMER: This is a large subject but it has been pretty well covered on some phases. I might say a good deal, but there are a few points I should like to emphasize. I think that we sometimes miss the attitude of the United States Attorney. In the last analysis he is not only the representative of the Government, and in a hard fought case he must make the argument personally, but he has other duties besides handling our cases. He is the representative of every Department of the Government and he is neither an agent, nor a clerk. In the early days when we had to do a good deal of the work ourselves and came into touch with the courts, I got some side-lights on these matters. I found that most of our cases, instead of going to the United States Attorney, went to his Assistant. If in any way the Assistant United States Attorney could be interested in the case, we were almost certain of winning. We made it a point whenever we were going to have a case in the district first to find out everything we could about the Assistant United States Attorney and get in personal touch with him. I also noticed in some of the courts that the cases which seemed to go most easily were postal cases. A postal inspector was always present and, the Assistant or the United States Attorney took him in hand and developed the facts that he wanted and put his cases through promptly and effectively. There is sometimes a feeling of resentment on the part of a United States Attorney when he receives a great bulk of information which we deem necessary but which isn't quite clear to him. This fact does not appear in the correspondence. The letters, of course, are always courteous, but we do not make headway. I might illustrate this point by one or two actual cases that came up several years ago. We had a case in Pennsylvania (I think it was the first case which appears in the Reports under the Lacey Act), in which the facts were presented as fully as possible to the United States Attorney and an offer of assistance was given, but as mentioned by Dr. Alsberg, he did not request any further assistance. In that case the Government was seriously handicapped. It was the first time there had been a game case in the district, the United States Attorney was a new man and I don't think he had ever tried a game case before in his life. The defendants were six or seven millionaires, several of them lawyers who came into court with the best counsel that could be procured in New York and Pennsylvania. When we arrived on the day of the trial and asked the United States Attorney to allow us to look over the indictments, we found them as full of holes as a sieve. He immediately saw the difficulty and requested assistance. As a result, while arguments were being made on the demurrer which had been immediately filed, the witnesses who were there for the trial, were put through the Grand Jury room in order to get a new set of indictments. When the new indictments had been returned, a second demurrer was filed which was much worse than the original one. The case was rather serious, and at our request the United States Attorney was invited to Washington to talk over the matter. The State of Pennsylvania was interested in the case and was anxious to press it, but with no possibility apparently of winning it. To compromise the matter to best advantage, the United States Attorney was induced to continue the case for one term, then a second term, and then to nolle pros it. None of that work could have been done by correspondence. Another instance. About 1909, a case violating shipment of game from New Orleans was reported through the regular channels to the United States Attorney in that city. It hung fire for some months. The Solicitor wrote several times, each time receiving a courteous

reply to the effect that the evidence was insufficient, or there was some reason for postponing the case. It so happened that in 1910 there was a convention of game commissioners in New Orleans. Our witness was from Illinois and I arranged with the game commissioners of Illinois that this witness should be sent to New Orleans as the representative of the State at this convention. I then arranged with the counsel of the Conservation Commission of Louisiana, who was a prominent attorney in New Orleans, to take this matter up formally with the Assistant United States Attorney. He produced the papers and explained his objections. He thought the evidence was insufficient. Counsel for the State conservation commission stated that in his opinion the evidence was ample, the he proposed to bring suit against the defendents himself under the State law of Louisiana. The Assistant United States Attorney said he would be glad to try the case, but he had no witnesses. I told him the witness was in the next room and, as the Grand Jury was in session every day, I asked him if he could put the witness through the Grand Jury room that morning; or if not, on the following day. The indictment was returned next day and the defendents, upon hearing of the matter, came into court, entered a plea of guilty and paid a fine of $50 and thus the case was closed up in 48 hours. The Assistant United States Attorney apologized to the witness because he was unable to pay his traveling expenses but we explained that this was unnecessary; as they had been arranged. The truth of the matter was, first, the United States Attorney had no particular interest in the case, and, secondly, he somewhat resented the letters requesting him to press it on the evidence submitted. I think we lose a good many cases by not having someone on the ground to furnish the evidence which the United States Attorney thinks he needs. Attorneys have some pride in their professtion and they think they know how they want to try a case, and they do not always see it in the same way that we do. I recall distinctly a case some years ago in Indiana which turned on a rather close question as to whether the birds which were shipped in interstate commerce had been killed on a certain day; that is, whether they were killed in the open season or the close season. We cautioned the United States Attorney on this point. About a week before the case came on, a note was received from, a prominent attorney, stating that counsel for the defendent was going to emphasize this point and going to win the case. The matter was taken up with the Department of Justice and a diplomatic letter was written to the United States Attorney again cautioning him to guard against this danger. A prompt reply was received that he was handling the case, that he appreciated the point, and would look our for it. The result was that after he went into court, he had to nolle pros the case. Another point is that apparently little is gained in treating these cases in a routine way. We have so many now that it may not be possible to guard against it, but I might recall an experience in Kansas some years ago where we had a number of cases sprinkled all over the State. The United States Attorney nine times out of ten secured convictions, and fines of $15, $25, $30. But I could not see next year that there was the slightest difference in the number of violations. The cases went through, and convictions were secured in regular order, but they apparently had no effect. The fines were not heavy enough to deter violators, very few persons except the defendent and his immediate friends heard of the cases and the violations continued. On the other hand, when the United States Attorney or his assistant takes a personal interest in a case, he either secures a heavy penalty or somehow impresses the matter on the court and on the community so that it puts a stop to that particular form of violation. One other point as to the fullness of the record: In a case that arose some years ago involving some elk, a shipment of elk from the State of Idaho, the evidence was secured at Los Angeles, California, and the District Court for the Southern District of California simply held the shippers, who were then in Los Angeles, for action in the Idaho court. It happened that the Assistant United States Attorney was very much interested in this matter and saw the importance of the case. He took testimony for several days, and the record filled about 800 pages, when the case came up in the district court in Idaho. I do not recall that the record was ever used, but in another case which later came up in the Yellowstone Park, this outline proved our salvation, and made it possible to win the case.

DR. ALSBERG: With the question of getting witnesses our experience has been very similar to Dr. Palmers. We found, when the United States Attorney or Marshal is either unable to locate a witness or defendent, or else knows where he is but cannot get him, I have yet to see the case in which our food and drugsinspectors cannot round up witnesses. They have certain advantages over the marshals. They do not carry a star. They are not regarded as policemen. They usually know persons who know the man in question, either neighbors or business associates, and they can get a hearing. They can find the man and talk to him, and when they get talking to him and tell him, "You are a witness and this is the condition of affairs", the man usually will come in without a subpoena. It is just that matter of helping the Government. Most people would rather help the Government than not and time and time again our people have rounded up and brought into court people without a subpoena, that the United States Marshal has failed to get.

MR. WILLIAMS: The United States Attorneys, as all of us know, are very busy men. They represent all the Departments. They have a large number of miscellaneous cases. They are crowded with work in most States. The result is that unless, when they take up the papers the case is made so plain that they can understand as they read along, they soon become bewildered and lay it aside, and the result is that the trial comes in on them before they are prepared. Now, the idea of this subject #2 here, is that the Department from the first man that takes hold of the case up to the last man that has anything to do with it, should marshall the evidence and the facts in the case in such logical sequence and such order and convincing style that when the United States Attorney takes up the papers he can understand as he reads along and get a bird's eye view of the case, so that he would be encouraged to proceed with our cases. Now, then, to do that, from the inspector who first takes hold of the case up to the information that may be prepared in the Solicitor's office the evidence should be marshalled in such order and in such a convincing way that the United States Attorney will understand our cases when he takes up the papers and reads them.

MR. HENDERSON: I think the point that Dr. Palmer made should be emphasized. You cannot treat these cases as routine, not because the cases are not routine, but because the United States Attorneys are not routine. Some of them differ from others in many respects. It is manifest that you cannot adopt the same scheme with different United States Attorneys, and where we have any special knowledge of what the United States Attorney wants, we should bear these things in mind.

DR. ALSBERG: There is one thing that I think might be done and that is, I think, very valuable at least for us. When a new United States Attorney is appointed, somebody with considerably authority and rank in the Department should make a semi-official visit and let him know that we consider him, and the cases sufficiently important to have him give them attention. I know of two in which the United States Attorney who was a new one did not seem to be particularly interested. I made it a point to go to his town and talk to him, in connection with a case that might be dismissed. We had a long talk and discussed other things and did not talk very much about the Food and Drugs Act. The result of the visit was that both of these men took a great deal of interest in our cases. It was not anything I said or did, but the attorney felt that if it was important enough for the Chief of the Bureau to come and talk to him, it was important enough to give it his personal attention. We have that particular thing work well with another set of officials, who were not discussed here. They are the State Food Commissioners. We make it a point for Mr. Abbott, just as soon as a new Food Commissioner takes office, even if a special trip to the Coast is necessary, to visit him. The State Food Commissioner does not as a rule know any more about food, when he comes into office, than the ordinary layman. He is grateful for any help that he can get. We start him in the way he should go and we afterwards get cooperation. Something like that can be done with the United States Attorneys. An attorney, when he comes into a new office, does not know. Of course,

he is an attorney and knows the work, but he has a thousand things to do and he is going to do those things with the greatest ease which are brought to his attention in a concrete way first. If we make a practice of sending him a responsible person, not an inspector and not an ordinary chemist, to pay a visit at the beginning of his term of office, it would help a great deal.

DR. PALMER: I agree entirely with everything Dr. Alsberg has said. I was just about to bring up that point of the new United States Attorney. We lost eight cases in one district last summer through inadvertence. The United States Attorney had been appointed only a few months and the violations occurred in November 1911, and when the matter was called to the attention of the United States Attorney it was too late to get the term of court to take action, whereas if the matter had been called to his attention shortly after his appointment, he not only could have taken them up but he could have won every one of these cases.

MR. WILLIAMS: These were the Kentucky cases.

DR. PALMER: Yes, the Eastern District of Kentucky. That happens elsewhere. I agree entirely with what Dr. Alsberg said about getting in touch with State officials. We have made it a point to get personally acquainted with commission merchants. They can often render great assistance.

MR. WILLIAMS: Mr. Shibley.

MR. SHIBLEY: I do not believe I have anything further to add, Mr. Williams. I might say, in the matter of assisting United States Attorneys, it seems to me very important that they be furnished information which will enable them to appreciate the point of view of the Board and understand the nature of the evidence the Department is in position to give in maintaining charges. It has often occurred to me, but I have never carried it out, to bring in the witnesses, especially in important cases, and ask them questions in regard to the evidence they can give at the trial and submit this to your office in the form of interrogatories and answers, with the idea that it would then be worked up in proper shape to transmit to the United States Attorney.

This procedure would practically mean that a case be tried in the Department before sending to the Attorney General. It would, I feel, result in the elimination of weak cases and bring to light the weak spots in important cases. The cases at least would be put in the hands of the United States Attorney complete in every detail. Do you not believe the presentation of cases in this way would be welcomed by the United States Attorneys?

MR. WILLIAMS: Undoubtedly.

MR. SHIBLEY: It would mean a great deal of work.

MR. WILLIAMS: It might mean such a tremendous amount of work that it would be cumbersome, but you have the germ of the idea that we should furnish him with a brief statement of what our witnesses should testify to, so he would know what to expect.

MR. SHIBLEY: We had a case a while ago in Baltimore, a very important case. The trial lasted several days. Your office and the Board worked in cooperation before and during the trial with the United States Attorney in Baltimore and over the telephone from Washington. At first the Assistant United States Attorney was very skeptical as to the merits of the case and the chances for a successful prosecution, but as the Government's side of the case was explained to him he became interested and in fact enthusiastic. The case was prepared by bringing in the witnesses and practically trying the case out of court. When the case came on for trial the Assistant United States Attorney was thoroughly prepared and the Government's evidence was developed in a complete and logical manner. Why should not the Department anticipate the needs of United States Attorneys instead of waiting until a case is set for trial?

MR. WILLIAMS: There is food for thought in that, Mr. Shibley.

MR. SHIBLEY: I believe the Board can prepare our cases in this way. It would mean additional work but we can feel assured that all evidence which should be developed in the event of a contest or which should be available for the use of the United States Attorney in meeting the contentions of the defendant or his attorneys in the disposition of cases without trial, will be in the hands of the United States Attorney. It seems to me that the need for such evidence being in the possession of the United States Attorney in cases which are not contested is of more importance to the Department than in those cases which are contested. Ninety-eight per cent of Insecticide Act cases are disposed of without contest. I imagine that the majority of such cases are disposed of in the office of the United States Attorney and he hears the evidence of the defendant only. The fines imposed by the Court in such cases are as a general proposition small. While the notice of judgment issued by the Department is a rather severe punishment, the amount of the fine imposed is a gauge in the minds of the public which determines whether or not the violation is a serious one. In my opinion a complete and detailed preparation of our cases would be a material factor in the matter of having larger fines imposed by the courts.

MR. WILLIAMS: Dr. Smith?

DR. SMITH: The evidence in our cases (meat inspection) is secured by our own inspectors, and they are directed to submit only such facts as are required by the printed forms for reporting violations. In addition, all our inspectors have been informed in a general way as to what information is necessary in these cases. When possible, written statements are also secured from the shippers. If such statements cannot be secured, then we try to get statements from those connected with them in some way. In other words, we try as far as possible to keep our inspectors right down to facts. In connection with the attitude of the District Attorney, I have nothing to add to what the rest of the gentlemen here have said.

MR. WILLIAMS: Dr. Shore.

DR. SHORE: Our evidence is collected by inspectors very much in the way mentioned by Dr. Smith. All of our inspectors have been informed also, in a general way, as to what evidence is needed. We have, however, not progressed to the point where we have supplied this printed form. As I said yesterday, all of our reported violations have been successful so far. I have not had any experience with regard to District Attorneys.

MR. LEES: I desire to emphasize the importance of one point, that is an explanation to enable the layman, from the scientific point of view, to understand the necessity for prosecution. Recently a case was sent from the Federal Horticultural Board, involving a shipment of rose bushes by some woman in Massachusetts to her country home in Maine. That impressed us as a trivial case and I have no doubt that it would appeal to the United States Attorney in the same way, and unless a case of that nature is explained fully to enable the layman to understand that a shipment of that sort is capable of carrying disease, it had better not be sent up at all. In the Forest Service litigation, as a general rule, we do not have much difficulty in explaining to the United States Attorney the view point of the Department and, as has been stated, the Assistant to the Solicitor is on the ground and explains fully to the United States Attorney, the Government's view point.

MR. WILLIAMS: Mr. Goding?

MR. GODING: I want to cite one instance under the live stock quarantine act. We had a case up in the district of New York for a violation of the 1884 act for a shipment of tuberculous cows interstate. That case dragged along from year to year and was finally prossed. A new District Attorney came on the job, and the Bureau inspector, who was up there at the time another similar case was tried, explained the case thoroughly to the United States Attorney. The Judge called this inspector into his private office, and as a result of that conference and what the inspector told the Judge, they secured a fine of a thousand dollars. That was the same kind

of a case in the same district where one had been previously nolle prossed. It was undoubtedly due to the efforts of that inspector.

MR. WILLIAMS: Had the original case been worked up so thoroughly that the United States Attorney could throw himself into the spirit of the case and grasp the essential features of the case at once?

MR. GODING: They had in both instances, but I don't think that he appreciated the effect of shipping tuberculous cows interstate in the first instance.

In regard to the suggestion of Dr. Ellenberger's about getting evidence under the 1884 act, it seems to me the Bureau could make up a form the same as they do in the 28-hour cases which would show the inspectors what questions they should answer, what evidence they should get. In regard to your question about the 28-hour law, about the excuses which relieve the railroad from liability, I might say that in some instances where a storm has been alleged by the railroad company, we have secured records from the Weather Bureau officials to prove that there was no storm which would anticipate the defense of the railroad company in that kind of a case. As you know, in our 28-hour law, the results of a storm may excuse a railroad company from liability.

MR. BOYLE: Reports of violations of the meat inspection and the quarantine acts, are first submitted to the Bureau of Animal Industry from its inspectors, then forwarded to the office of the Solicitor for attention. The evidence is examined to ascertain whether complete violations of the law are established. If so, the cases are referred to the Department of Justice, with a brief statement of the facts on which the United States Attorney may rely upon the witnesses testifying. The evidence is briefed so that the United States Attorney may have before him, at the time of trial, in concrete form all of the facts which he can by the witnesses.

TOPIC III.

Methods of Collecting Evidence of the Commission of Offenses.

MR. WILLIAMS: Gentlemen, that concludes the discussion on subject number two, unless someone has some other suggestions to make. There have been a good many points brought out here that furnish substantial food for thought. The third subject is "Methods of Collecting Evidence of the Commission of Offenses." A good deal has already been said this morning under subject two which applies to this number three, but undoubtedly an exchange of information among the members here as to the manner in which the evidence is collected under the various laws that are administered by the Department may result in developing a scheme that has never been thought of before by someone else and may lead to considerable efficiency. I am going to ask Dr. Haywood to discuss the method of collecting evidence under the insecticide and fungicide law.

DR. HAYWOOD: Mr. Williams, I don't exactly catch what is wanted along that line. Do you mean starting with the case at its beginning, or how the evidence is collected?

MR. WILLIAMS: I think the idea is this: To state what is your present method of collecting evidence of the violations of your law, beginning at the very outset with your inspector and by any other means that may be employed by the bureau, and then submitting any suggestions for a change in the methods and enlargement of the methods that may occur to you.

Dr. HAYWOOD: I will say in a very general way that in collecting the evidence for the enforcement of the act, it is, of course, necessary first of all to get evidence of the interstate shipment which the inspector is directed to get at the time that he collects the sample. In other words, he must collect all the records to prove his interstate shipment, such records being submitted to the bureau along with the sample that is collected. When the sample arrives at the bureau, it is very carefully looked over and it is determined whether merely the chemical analysis of it will tell all the facts that are necessary. If so, it is referred to the Bureau of Chemistry's representative on the Board for examination. However, if a chemical analysis is not sufficient, if it has entomological claims, why a part of the sample is referred to the entomological branch of the work, the other part to the chemist. In all cases it has to be referred to the chemist because the entomologist and plant pathologist have to know what the analysis of the material shows. It also may be referred to the bacteriologist. In a great many cases, we have samples that have to be referred to all four branches of the service: entomologist, plant pathologist, the animal industry branch and the chemistry branch, as well as to the bacteriologist. After the sample has been tested by these various parties to find out whether the statements are true on the label, each branch of the service then outlines charges which they think should be brought against this product from their point of view. These charges then all come to the central office, to the Chairman of the Board, and the Chairman of the Board collates, so to speak, all these charges, and if the different branches of the service have overlapped their charges, or anything of that kind, as oftentimes happens, that must be straightened out. Then the case is put before the Board in its complete form for a decision as to whether we shall cite on the charges or not. In case a citation was agreed upon, the charges were formerly sent to the respective bureaus (Chemistry, Entomology or Animal Industry), asking them to hold a hearing for us, in case that was necessary, and the Board could not hold the hearing itself. But now we have entered into an arrangement with the various bureaus by which we send the charges directly to the laboratories in those bureaus in the field asking them to hold the hearing. That has been done through arrangements with the chiefs of the various bureaus. Handling the matter in this way we think we will save at least a month on the hearing of the cases. After the citation, it comes back to the Board for a decision as to whether or not prosecution shall be recommended on all the charges or part of the charges, and if it is decided that we shall recommend on certain of the charges, it is then written up for the So-

licitor and sent to him for his action. In writing to the Solicitor, we tell him when we think expert witnesses will be necessary, and when we do not think expert witnesses will be necessary. Oftentimes later we have to reverse our views and get our expert witnesses where we didn't think we would have to have them before. But, as a general rule, we try to tell the Solicitor when we think expert witnesses will be necessary, and we set about corresponding with the various expert witnesses that we think will prove our points in court, to have them ready for the trial of the case. Leaving out all exceptional cases, that in a general way is the way we handle cases under the Insecticide Act. There are various places where we believe we can save time that have been brought up since this matter was brought up for discussion by the Solicitor's memorandum to the Secretary, but I would prefer to take those under "Specific suggestions of various means for reducing time between the commission of offenses and transmission of cases to the Department of Justice," and therefore with your permission I will take that up under heading 9.

DR. HAYWOOD: I might add that I think that our method of collecting data is to a large extent the same as is used by the Bureau of Chemistry in its enforcement of the Food and Drugs Act. Of course with the difference necessarily arising where a Board is acting on the matter rather than a bureau and with the difference necessarily brought about by the different classes of articles from those handled by the Bureau of Chemistry.

MR. WILLIAMS: A large part of the evidence in your case and in the cases under the Food and Drugs Act consists of chemical analyses. You don't have much trouble proving interstate shipment?

DR. HAYWOOD: As a great whole, we do not have much trouble proving interstate shipment. I think as a rule it is very easy. It is sometimes a tedious matter to get all the records. Our particular trouble lies in the following: in the case of drugs there is at least some previous knowledge about their action. We have books of materia medica, pharmacology, etc., which give us some means by which we have therapeutic records of the substances that enable us to know whether a drug will or will not do what is claimed for it. In the matter of insecticides and fungicides, however, there has been no working up of the science to such an extent as there has been with drugs, so that in each individual case it is largely a matter of having to test each and every one of the ingredients which enter into the preparation as to whether it will or will not kill the insects or fungi and then test the combination of them as to whether such combinations will kill insects and fungi under the conditions laid down on the label. It is very common for us to find the following: a kerosene emulsion at a certain strength is an effective treatment for scale insects but at one-half the strength you might just as well put water on; so it is a question of testing each sample.

DR. ALSBERG: That question of collecting evidence, as far as the Bureau of Chemistry is concerned, falls into three divisions. In the first place, there is the matter of arousing our suspicions, getting a lead, suspecting somebody of something. We get these suspicions in a number of ways. One of the most effective is a complaint of one manufacturer against one of his competitors. That complaint is never specific. He writes us or tells one of us personally, "I am in this business and I am doing an honest business. I am only doing things that are legal; but there are certain competitors who are not doing that but are doing thus and so." We ask who they are, and he says, "I would rather not tell." But having been told that a certain condition exists, it is easy for our inspector to find who his competitors are and what they are doing. Another way is by factory inspection. Our inspectors, while they have no authority of search, find that there are very few manufacturers who close their doors to them. In consequence, our inspectors spend a great deal of their time making factory inspections. In the course of these inspections they may learn that a manufacturer is getting a certain class of articles which are commonly used for adulteration purposes, or may find that this plant is in a filthy condition, or may find that this manufacturer is diluting his products. We are at present engaged in standardizing the question

of factory inspection. We are at work on a series of forms which are based on the dairy score card system, for the different divisions of food industries. We are getting up one form of score card for tomato canning plants and another form of score card for baking powder manufacturers, and are trying to arrange it that numerical values can be given to the various points of importance so as to make the factory inspection uniform. One man calls a factory dirty which another man would call poor but not very bad. From these factory inspections we can get a great deal of evidence. Another form of getting evidence is to watch the nature and the quality of the goods the various manufacturers are receiving. Another way of getting evidence is through the cooperation of the jobbers. The jobbers and the wholesalers do not want to handle goods that are in violation of the laws and so they always welcome having our inspectors visit their warehouses. They will tell them to come and visit their warehouses, and they will put an inspector on the track by telling them that "such and such a company has offered us this class of goods at 20 per cent below the market value. There must be something the matter with them." The inspector makes an investigation to see why this particular firm is able to undersell its competitors. These are the chief ways in which our inspectors become suspicious and collect the official samples. Then, as for the collection of actual evidence, once the suspicion has been aroused, that, of course, consists of three parts - the factory inspection, the matter of collecting the sample, the interstate shipment, and then the analytical evidence. The factory inspection really causes us no difficulty. Inspectors are admitted to most plants. Occasionally this is not done and permission is not granted, but as a rule it is. The collection of evidence of interstate shipment is a matter without difficulty. It may take time and considerable ingenuity. The jobbers, express companies, and railroad companies throw their books open to the inspectors. It is largely a question of securing copies and the actual records in some cases. As long as inspectors were allowed to range the country and collect anything that they suspected--in cases where the goods were sold too cheaply or where there was a complaint--and in many cases there should have been no complaint, or for other reason they suspected the goods, they collected an official sample. They very frequently put up questions to the bureau of a scientific nature which the bureau was not able to answer. That is to say, they may suspect, for example, a form of adulteration of vinegar, the detection of which has not yet been made the subject of analytical study. It may be a new form of adulteration, and that may require one year or two years of study by trained analysts to detect. In that event we have an official sample and perhaps have cited the man to a hearing before becoming aware of the scientific investigations not having been made. There is going to be a delay. The method of avoiding this delay is not to cite the man or collect the official sample. Very often we do not cite him, but his jobber may tell him the Government inspector has taken up a certain sample and he will for a time change his label. The practice is to have an informal sample collected and nothing done until investigation is complete. Then take another sample and make our regular case. There need not be any delay. This has not hitherto been the practice of the bureau. It has only gone into effect during the last three months but will very greatly cut down losses of time in a certain number of cases and eliminate those cases where the scientific evidence is difficult to get. I forgot to mention a third class where the evidence is complete but supplied by State or municipal officers. These are becoming quite frequent with us. That is all I have to say about the collection of evidence, except that I would discourage so far as possible having our inspectors misrepresent themselves. Our instructions to them are to tell everybody who they are and what they are doing. We do not want to enforce the Food and Drugs Act in the way counterfeiting laws are enforced because we have to deal with a different type of people in such cases. Occasionally we find that the man we have to deal with cannot be gotten except through ordinary detective methods--so called-- but if the matter is serious and the man is deliberately and wilfully doing work of that kind, we make an exception. We had a case in a large city in which we knew that a certain manufacturer was using rotten eggs for food purposes. We could not get into his plant and he was selling goods for food purposes and for manufacturing purposes, and we could not follow them. One string went in and two

strings went out, some for manufacturing and some for food and there was no way of telling whether the small quantity of good eggs went into food products. An inspector worked with a teamster, a drayman who did trucking for the concern. He got the eggs from the railroad and went into the plant and delivered them. He marked the cases and put chemicals into the eggs so that they could be identified. Saw them all the way through the plant. It was impossible to do that otherwise; but this was only one case in which there was a particularly atrocious form of violation. The manufacturer had been in jail before - not for violations of the Food and Drugs Act, but for pretty serious offenses under other statutes.

DR. HAYWOOD: I would like to just add to Dr. Alsberg's remarks that in collecting evidence there is another source that I left out that was spoken of before under the Food and Drugs Act and which is very important under our Act; that is the officials of the various states. We receive a great deal of information from the entomologists and also the plant pathologists of the various states, and the nursery inspectors, which enables us to make cases, or to collect samples which are subsequently cases under the Act, and I would like to add to my statement that, in a modified form, we adopted about two years ago a system with our inspectors which is very similar to the system in the Bureau of Chemistry now, not exactly in the same form he speaks of. We bring our inspectors in for a month in the winter, then the scientists in the various branches of the Service go over the products they had the year before, examine the labels and note those points which they thought were untrue but could not prove were untrue with the testimony before them. The inspectors are then definitely told to get these special products, and oftentimes it is a long list of products, for a certain test. In that way certain samples for the entomologists and plant pathologists, are collected. Also, when we have prosecuted a case against a man, the inspectors are directed at this winter conference to collect a sample soon after the case is tried in order to see if the manufacturer is still disobeying the law. Their attention is called further to collecting the samples for the spring insects in the spring and the winter insects in the fall, and the household insects at the time of the year we can get hold of household insects.

MR. WILLIAMS: Since beginning the discussion of number three, Mr. Caffey has entered the room and I will ask Mr. Caffey to give us his idea of what is the scope of subject number three.

MR. CAFFEY: We mustn't forget that the evidence we collect must be useful. We mustn't collect it unless it is useful. Juries are very human, and you never can tell which of these cases you have got to try before a jury. To give an illustration of the human side of the jury, in a food and drugs case we had before a jury--Dr. Alsberg was there personally and Mr. Gwinn was there--the question was one of misbranding, but the issue finally tried before the jury was whether or not the defendant had swindled the driver out of his wages. That was the human issue. How did that come about? It came about through the cross examination of the witness--one of the Government witnesses--by the counsel for the defendant. This driver had transported the goods from St. Louis over to East St. Louis in interstate commerce. We had great difficulty in locating him but produced him, much to the surprise of the defendants. They sought to discredit him on cross-examination. On redirect examination, there was a pretty good showing that the defendants had tried to swindle him out of his wages and he had quit voluntarily.

So it is when we produce our Government witnesses. If we have inspectors go around, they lay themselves open to criticism in the sharp cross-examination they are going to have by defendant's counsel. The effect of that testimony on the jury is going to be very much weakened if the inspectors are indirect or unfair.

I had a specific illustration in a case of my own in private practice where I appeared for defendants and Government officials appeared as witnesses for the Government. A Government official, in collecting evidence, had, without any knowledge of the responsi-

ble officials of the defendant company, gone up in the country and about dark got out to the house of one of the subordinate employees who had been accustomed to make out certain shipping documents for the company. Upon his return, as the Government official represented it, the employee withheld or showed signs of withholding information. The official threatened him about getting himself into the penitentiary and indulged in rather extravagant language as to what his powers were and what he was going to do about it. This employee the next day wrote a full account of the occurrence, which was sent down to the head office of the company. In the trial of the case, the Government had the corporation produce all of its correspondence. This particular letter was offered in evidence and was passed up to the Judge to look over. The first thing that struck him was the manner in which the Government official had mistreated a private citizen, and he proceeded to deliver a lecture right there on the outrages committed on citizens by Government officials. The Judge is human, just like the jury. Not only what he said had an effect upon the jury, but he excluded that document. He said that the evidence had been procured under such circumstances that it wasn't fair to the defendant to admit it. So I think Dr. Alsberg's suggestion of the utmost frankness on the part of inspectors is important, not only from the standpoint of treating the individual citizen right, but also from the standpoint of the value of that official as a witness when he is put upon the stand to prove certain facts.

Of course, thereis another feature about the usability of evidence after you have collected it; that is, to get it in the best form so that it is competent evidence, not merely relevant, but not secondary or otherwise inadmissible. Frequently, of course, for the information of the bureau or for the Department you will want the inspector to put in a good many facts in the report that are not intended to be used in court in the case, but it ought constantly to be kept in mind that the evidence that is producred that relates to the commission of the offense should be in the best form possible for Governmental use.

I would also like to say a word about the second subject here. Doubtless, it has already been covered, but I want to tell you somewhat what was in my mind in suggesting that subject for discussion. In preparing these cases to go to the Department of Justice, it is necessary somewhat to project our imagination into the situation. Here is a scientific man in one of the Bureaus. He determines to his satisfaction, and perhaps very competently, that one of the statutes has been violated. But that is not enough. That scientific man way down the line has very little opportunity ever to get his views before the court, and the sole means provided to get his views before the court is through the United States Attorney. We find the United States Attorneys as a rule most sympathetic, intending to give us the best attention they can; but they are busy and overburdened officials, and unless you picture the thing to them so that they fully comprehend it, the important proposition that the scientific man way down the line knows ought to be litigated out before the court is not going to be litigated. You must constantly keep in mind the United States Attorney as the final ultimate representative of the Government to get your views before the court. It doesn't make any difference what we way back here down the line may have in our minds; unless we picture the thing in such adequate form that the United States Attorney not only can comprehend it, but that he can make it simple so that a jury can understand it, your views are not going to get before the court.

DR. PALMER: It is rather late and I should like to know just what point you wish to bring out on the collection of evidence.

MR. WILLIAMS: I think a brief discussion of the methods employed in procuring the evidence in the violations of the law that you administer.

DR. PALMER: You mean the methods that we have actually used?

MR. WILLIAMS: Yes.

MR. CAFFEY: Also suggestions.

DR. PALMER: Our problem is diametrically the opposite of that of Dr. Alsberg as far as the shipment of game is concerned, for this reason; the law provides a penalty for shipping game in interstate commerce when this game has been killed and forwarded in violation of local law. The shippers of game know very well every time they ship birds in violation of the State law and consequently they keep under cover. They resort to every scheme to defeat the law and hide their identity under assumed names, false addresses and women's names and addresses. All correspondence is between the commission merchant who receives the game and the shipper of a consignment of birds is eliminated so that it is not possible to collect evidence of interstate shipment merely by the records of the carrier. Furthermore, game can only be shipped at certain times of the year and under certain weather conditions. When the law was first enacted, it was comparatively simple to catch game in transit by going to the principal shipping centers, visiting the depots, and observing the marks on the packages. Here we are handicapped by the fact that our inspectors have neither authority to search or seize, consequently, they have to cooperate with State officials who have such power. In order to see whether our assistants were getting the best out of it, I made it a practice to work with each of the men as far as I could in collecting evidence. I spent a number of days studying the trackage arrangements in each of the depots in Chicago, the manner in which shipments were handled, the times shipments came in, and went with local officers to see how they discovered game in transit. On one occasion I spent four days in St. Louis studying the way the trains were handled at the Union Station, the way the cars were handled at the Union Express depot, the way the game was handled in the commission district, and also in talking with the commission men. As a result of this investigation, it was found that considerable quantities of game were brought into St. Louis in candy buckets from Illinois points. By cooperation with the local and the Illinois authorities, a systematic examination of such packages was made, which resulted in a number of seizures that winter. In the case of game, I have yet to see a case in which the game itself is desired as evidence by the United States Attorney in the case. Usually he simply wants a witness who can prove the facts of interstate shipment. These facts include the contents of the package, the marks on the package, and the waybill or freight bill of the carrier. These shipments are made under cover. Game is marked everything but game, and frequently there is nothing strange about the package to attract attention. Game is also often put in cold storage under conditions which make it impossible to examine the package.

DR. ALSBERG: I thought the thing had to be correctly billed. A great many food products have to be correctly billed or they can not be shipped. You could probably get the Interstate Commerce Commission to make such a ruling.

DR. PALMER: If we could, it would be of great assistance.

DR. ALSBERG: We have been able to get the Interstate Commerce Commission to make such a ruling on several occasions.

DR. PALMER: The trouble is, ducks, for example, are billed as poultry and many officials consider that correct billing.

MR. CAFFEY: That depends on the particular tariff. It is not an offense for which you could get a conviction unless it is a means of getting a lower rate, as I understand.

DR. PALMER: I do not think they get any lower rate. In the case of plumage you have something which is much more difficult to catch in interstate commerce than game. Plumage is used chiefly for women's hats and may be found as part of the trimming on trimmed hats. This class of goods has to be disposed of promptly, as styles change rapidly and goods are not held over from one season to another. On arrival at a wholesale or retail house, the packages are either broken or changed so that the marks on the original package

are no longer available. It is very difficult to discover plumage from the marking on the packages, and if a case is marked "trimmed hats," it is billed as "trimmed hats," although plumage may be one of the articles in the package. Moreover, on arrival, the boxes are taken off and burned. Consequently, we have not been able to obtain evidence regarding illegal traffic in plumage except by induced shipments.

DR. ALSBERG: I imagine that some of our inspectors have handled certain classes of goods about that way and Mr. Campbell may be able to give some information as a result of his experiences.

DR. PALMER: In Chicago at one time it was necessary under the State law to catch goods in transit between the time the shipment arrived at the depot and the time it was delivered to the consignee. Once in his wagon, even at the depot, it could not be touched and it was pretty lively work in the morning when goods came in at the large depots to catch the shipments before they were delivered. We have gone through a sort of evolution during the last ten years. When the law was new, shipments were made chiefly by express and the evidence was largely collected at the depots, but in recent years a large part of the game shipments have been driven out of express and now go by freight, parcel post, and baggage. It is only once in a while that a large freight shipment can be caught in transit and it is very difficult to catch baggage shipments. Unless you can go through all the baggage in the car, it is almost impossible to detect a trunk or suitcase containing game, and when you find it you have merely a baggage check for evidence of interstate shipment.

MR. CAFFEY: You discover them only by the odor?

DR. PALMER: In various ways. Some of the inspectors are very expert at what they call "hefting" baggage. At Milwaukee I found that they could discover game in baggage by lifting the baggage and shaking it. A package marked eggs may contain birds, but a package of birds has a very different feeling from one that is really packed with eggs. A trunk packed with game has a different feeling from one that is packed with books and clothes, but in one case a trunk supposed to contain game contained graphaphone cylinders.

MR. BOYLE: These packages of game are under refrigeration?

DR. PALMER: Not in transit. Another difficulty is that shippers sometimes line the packages with tar paper. Coming to the collection of evidence from the books of consignees, this may seem easy, but our men are not in the same position as men acting under the Pure Food Law, who work with dealers who are trying to do a legitimate business. Men receiving game know that it is shipped in violation of law and it is necessary for them to protect the shipments if they are to get more game, consequently, they are usually loath to furnish information. Because of a change in the State law or because he is liable to prosecution, the consignee will sometimes come forward and open his books and then we go back over the record for three years and usually get a number of cases. Once in a while consignees will come forward and offer this information, which our inspector, not appreciating the motive, accepts, but later discovers that it was done in order to escape prosecution. We have lost some very important cases because inspectors game immunity to the very men against whom we were trying to secure evidence. We find that the best way to deal with consignees in a number of cases is to use them as unwilling witnesses. For example, if we find that shippers at Raleigh or Greensboro, N. C., have been shipping game to one firm in Baltimore, which we learn from the records of the railroad company, and we succeed in making a case against each shipper, we call the consignee as a witness in each of the shipper's cases and he is willing to furnish almost any evidence rather than take the time of his clerks to appear in court. But even with all these methods, we fail to get the evidence as we should because without any question some phases of interstate shipment of game present a more difficult problem in collecting evidence than any of the other laws which this Department is enforcing. We have to use all conceivable methods and it is only through

cooperation with common carriers and local authorities that we can do anything.

MR. CAFFEY: Purchasers of the game are very sympathetic to the violation.

DR. PALMER: Naturally.

MR. WILLIAMS: You have had game shipments in coffins with medical certificate attached.

DR. PALMER: Yes, in one case in Chicago two deer were found in a coffin box. I asked the inspector how he happened to find the game and he said he noticed the health certificate on the box and decided that whoever made it out did not know much about making out such certificates. On one occasion in Chicago we found a small box in an express car. The agent immediately took pains to explain it was all right and had been put on at the last station in Minnesota. The inspector insisted on opening it, although the only suspicious thing was the address in New York, which I knew to be in the commission district. On removing the cover we found some magazines, and, on lifting the magazines, we found sawdust. Under the sawdust were some cakes of ice, carefully cut to fit the box and frozen in one piece, and under it were 13 partridges worth about $30 in New York. These examples will give some idea of the way this information is collected.

MR. RAUB: The collecting of evidence of offenses pertaining to the 28-hour law appears to me a whole lot simpler than the arguments I have heard advanced on the other laws this morning. We have simply to establish the fact than an interstate shipment is made, that the animal is confined beyond the statutory period and in a general way through the car movement record that there was no wreck or storm or wash-out or other occurrence en route which would relieve them from prosecution. However, in securing the evidence, we commence with the arrival of the animal at its destination or at its feeding point en route. Inspectors of the bureau are stationed on the unloading docks. They witness the unloading of the animals, and check the billing as to the time of loading at origin or feeding en route as against the unloading at destination or the feeding point where the inspector is located. From that the inspector finds out or believes that there has been a violation of the law. We have distributed among all the different stations a form to make out reporting such apparent violations, which covers certain information establishing that the shipment was an interstate shipment, the arrival at destination, theunloading time, etc. When these forms are received the cases are taken up from here and completed, then forwarded to the Solicitor's Office for prosecution. I might add here that some years ago, while talking over 28-hour matters with the District Attorney in Western New York, he told me that he had lots of difficulty in the way the cases came to him; that after he went through the whole form which covered four pages, he found out that there was a violation, but it took him a long time; and we were firing in reports there pretty fast, and it was keeping his office busy. He asked me if I couldn't devise a scheme whereby I would show on the first or last page a summary of the movement of the car, so that he or his clerk would take this and go through it in possibly one-tenth or one-twentieth of the time to determine how the violation stood and what they could do with it. On his request, I devised a scheme of reporting which I believe was accepted by the Solicitor's Office and by the Attorney General's Office as being one of the best that had been put into force. As a matter of fact, I believe they wanted it used throughout the different parts of the country.

MR. CAFFEY: You rely largely upon carriers' records, don't you?

MR. RAUB: We rely entirely upon the carriers' records.

MR. CAFFEY: But you have a problem sometimes, don't you, of the falsification of the carriers?

MR. RAUB: Yes, I am coming to that. In preparing our complaint we have inaugurated just recently a new form of reporting these cases under which we expect our men throughout the country to send in uniform reports giving the information in the same form so that it will go to the various District Attorneys in a uniform manner. It shows the complete movement of that car, the origin, the shipper, the contents, a statement from the owner (when he accompanies the stock) as to the time of loading, the origin, what happened en route; in fact, all questions pertaining to that shipment; also a copy of the waybill and of the running slip showing the billing of the live stock, which in itself will show that it was an interstate shipment. Our man at the bureau station reports the case and I follow it by correspondence from this office. Formerly, I spent years going all over the country in my district, gathering the information necessary to establish a case, but I found that I could do that without going to all these different points.

MR. CAFFEY: Is it required by the Interstate Commerce Commission or the Interstate Commerce Act that the carrier keep complete and correct records of the time of arrival and departure of every train from every station?

MR. RAUB: Unfortunately, there is no law compelling the railroads to give us any information at all. Neither is there any law compelling them to keep any movement record of their trains. The movement record is kept as a part of the railroad record. It might be in place to ask if it would not be possible for the Solicitor's Office to arrange with the Interstate Commerce Commission to require that the railroad companies' books be open to the bureau inspectors for the purpose of ascertaining if the law has been violated. We can not go to the railroads now telling them that we are 28-hour men and that we are looking for violations. If we do, they would simply close the books on us.

MR. CAFFEY: Didn't we draw a bill on that, and isn't it in Congress now?

MR. RAUB: I think it is on the shelf. Where railroads are pretending to feed their stock, placing a notation on the waybill showing that the stock was fed, the records themselves sometimes will show that the car was not at that point for a length of time necessary to feed the animals properly. I also have found in many cases that agents are putting a notation on the billing extending the time of confinement to 36 hours, with no authority whatever, simply because the law says that the time can be extended upon request of the owner or his agent. There are many circumstances which come up that illegally confine the animals beyond the statutory period which Congress might provide for, if it would. I don't know how to bring that about any more than to bring it up as a suggestion here. The getting of our evidence, I believe, is so entirely simple as compared to the getting of evidence for the other violations of our laws, that I think I have covered everything that is to be said regarding it.

MR. WILLIAMS: For the benefit of some of those who are here this morning that have not been present before or were not present yesterday, I will state that we were discussing the third subject, which relates to methods of collecting evidence of the commission of offenses. Now we heard from Dr. Haywood, Dr. Palmer, and Dr. Alsberg on that subject. We are not progressing quite as rapidly as we think we ought to. If we go along as slowly as we have we will string this thing out for a week so I think we had better adopt a different plan of conducting the hearing and not call upon everybody to discuss each subject but leave it to anybody to volunteer any comments that they have to make about the matter. I notice Mr. Campbell is here this morning and Mr. Campbell having had a great deal of experience in the matter of collecting evidence of violations under the Food and DrugsAct, I am going to get Mr. Campbell to give us the benefit of his experience both in collecting the evidence himself, if he has collected any, and certainly in respect to his direction of the collection of evidence, the handling of inspectors out in the field, who perhaps are not always well enough informed of just what we need to put the case up to the court. I would like to hear from Mr. Campbell.

MR. CAMPBELL: I don't know anything that I can say that would not be a repetition of or covered by the remarks of Dr. Alsberg. The experience that we have had has been restricted exclusively to that class of evidence necessary to prosecutions under the Food and Drugs Act. The experience which I have had has been connected, until recently, altogether with the inspection end of the work. Primarily the inspector's work involves the collection of the sample and the procurement of the records to establish sale and interstate delivery. When we first started the work of developing prosecutions under that law in July, 1907, the inspection force started without any idea at all of what was to be done, or the type of evidence that it was necessary to collect, and, with the idea that I had, which I tried to impress upon them as much as possible, that they were essentially inspectors and not clerks, and that they should be hampered in a minimum with the red tape requirements of Government work, which all my life I considered a sort of bugbear to real progress, the inspectors went just a little too far on the other side and did not collect nearly enough evidence to establish any case. They had not been sufficiently complete in that work and it was necessary then to make extra trips and take precautions that we had not taken in the original instance for the purpose of getting evidence necessary to maintain the case. It was an expensive proposition and at one time the Bureau of Chemistry was confronted by the condition of not having the evidence to maintain most of the cases reported. That is the usual experience, I believe, of newly organized work in the development of the machinery for enforcing a new law. Subsequently the matter was taken up with the Solicitor's office and he indicated just what would have to be done and we have now a collection report that involves an account of every transaction associated with the shipment and sale of the sample to the inspector and anticipates fairly well all inquiries on the part of the over-cautious and over-exacting district attorney. It is a most complete history of the collection of samples and at the same time it refers to and identifies the records needed in establishing interstate delivery. We do not have any trouble on that score at all now. However we do have difficulty in getting the State officials who have authority under the terms of the Food and Drugs Act for

the enforcement of the provisions of that law, as collaborators of the Department of Agriculture, to understand the import, the necessity for the various requirements that are imposed, not only in this form but in similar ones. It happens, now, incidentally, that the Chemist of the Bureau of Chemistry who is in charge of the State cooperative work, was himself a State Commissioner and undertook to institute a prosecution under the national law according to the State officials idea of maintaining these cases. He found a shipment of wheat that had been shipped from Kansas City to Texas, and went to the United States Attorney and said he wanted that wheat seized, and it was seized. Mr. Abbott and I have had occasion to refer to this incident several times, and he is now one of the most ardent advocates of collecting what may at first appear to be an unnecessary amount of evidence. We find it necessary, and he is anxious to have each State man have his own individual experience with United States Attorneys and get an idea of the work necessary to maintain a prosecution under the Federal law with relation primarily to the inspection work under it. There are other kinds of prosecutions requiring collection of evidence which is not of this pro forma type and some of that evidence can be collected easily and some of it is impossible, almost, to collect at all. Some cases are in the nature of misbranding, such as a label stating that the product is of foreign origin whereas it is of domestic origin, and that the particular sample on which the prosecution is based was domestic rather than foreign, that we cannot establish except by factory inspection. This is supplementary testimony rather than direct testimony about that product. If, on the other hand, the case be one of adulteration, it can be determined by the chemist's analysis and there is very little difficulty in presenting the direct evidence necessary to maintain that prosecution, and this is likewise true of most cases of misbranding. This is just a short resume of our general work, of our efforts to maintain cases under the Food and Drugs Act.

MR. WILLIAMS: How many inspectors have you?

MR. CAMPBELL: In the Eastern District - there are three geographical districts, Eastern, Central and Western; the headquarters are Washington, Chicago, and San Francisco - there are twenty.

MR. WILLIAMS: Twenty in the Eastern District?

MR. CAMPBELL: Yes. About the same number in the Central and about half that in the Western District.

MR. WILLIAMS: Well, Mr. Campbell, I think it would be interesting if you would tell us something about the way you direct the work of these inspectors, because some of the other Bureaus have problems of directing a corps of inspectors, some not so large, some may be larger.

MR. CAMPBELL: The idea that an individual entertains about the correct way of collecting material of this nature in advance of any knowledge he may possess of the conditions under which he is to work, is not worth very much and he will find usually it is very wrong. The inspection work in the collection of samples shipped interstate was the easiest thing in the world to do. Or rather, it was, when it first began - at a time when you could pick up drugs that were impotent for the cure of any disease at all and which were labeled consumption cures; at a time when you could pick up syrups with a small portion of maple syrup, labeled as maple syrup. All we had to do was to use our suspicions. We could get a general knowledge from the examination

of the products themselves. This was done pretty largely in the work at that time, and while a great part of our effort was not properly directed I don't know that there was any work done at that time which was not of big value in indicating what we could and should do subsequently. Putting all the samples from a manufacturer in the laboratory, it was only a short time before we knew what firms were adulterating their products. Instead of these exaggerated claims which once prevailed, the character of the labels has been revised, the nature of the products has been changed and as a matter of fact the precautions have been graded down until essentially they involve considerable more detail than they did formerly. I think that the only way by which work of this kind can be directed, if you have sufficient force to do it, is to require information at the real fountain head, at the factory itself. I do not believe it is a good plan, because it is expensive to begin with, to merely permit the inspector to exercise judgment in the collection of samples. For instance, send a new man into Texas and let him exercise his own judgment and the very first thing he will do is to collect those samples he does not know anything about. It may happen that one of the most reliable firms in the country has just opened a territory in that section and the first thing he would do is collect a full complement of these articles. He is wasting his time and the time of the laboratory, because examinations made elsewhere and the general knowledge of the firm would be sufficient to indicate that the goods were all right. We have adopted the course of collecting samples only with reason. We have the inspector state his reason for collecting. The rest is administrative routine in being able to keep records of all the information you have acquired from any legitimate source about a preparation or a particular firm, or about the collection of samples. In New York, where more food and drug products are manufactured than in any other city, we try to have inspectors who can specialize on factory inspection. This cannot be done by a man who has just come into the service. It would be absolutely useless to send him to a factory. We try to confine these inspections to men from the laboratories who have knowledge of the technique of the work and upon receipt of the reports from the inspectors, we know what to expect in this particular firm's practices. We then have interstate shipments reported and the inspectors in those sections where the goods go collect samples. At the same time there is filed a copy of a report or there may be transmitted copy of letter which has accompanied the sample and shows in every detail the exact reasons for the collection of the sample. We then have some knowledge of benefit to the chemist in examining samples. He knows why it was collected. Our work, now, instead of being generally left altogether to the judgment or to the suspicion of the inspector, is on the other hand so well classified and defined that the inspector who collects the sample has very little more than a mechanical duty to perform. That is in that one type of work only. On the other hand, don't think for a moment that we have enough inspectors to know just what every firm engaged in the manufacture of food products is doing. I wish we had that, and sufficient cooperation between ourselves and the State officials to permit us to know pretty thoroughly what every firm engaged in that business was doing. On the other hand, there is a great deal of the ordinary current work in the city of New York - the transportation, receipt, and shipment of goods to and from that point - sufficient in amount to keep employees on the docks there continuously - a good force of inspectors. We have one inspector to two miles of docks and he can get around in one month's time. We have not sufficient men to do it. We have taken the matter up with the city authorities and Dr. Brown, who is the Commissioner in New York City, has established cooperation whereby we are using

a half dozen of his men in this line of work. If they find a case of goods that are without question filthy, decomposed, or putrid, and a matter for federal control they transmit the information to us. If local, they handle it themselves.

MR. WILLIAMS: Mr. Campbell, have you ever had a general meeting of your inspectors.

MR. CAMPBELL: Yes. We have never been able to have all together, except early in the game. That was in 1908 or 1909. We had one meeting at Chattanooga, at which most were there, but not all. We found it was impossible, and certainly later on when a good many cases were developing and prosecutions pending in court, to arrange a meeting to get all the inspectors there. At the same time it would be a matter of considerable expense to do it and the necessity for certain ones to appear as witnesses in cases, made it impossible to select a date upon which to hold it. We have adopted the plan of holding sectional or local meetings. Mr. Stengel, who is associated with me, or I, have gone around and at each of these local meetings, consisting of twelve or fifteen inspectors, one of us would be there and keep them posted on work in other territories. Instead of having a letter of information we have taken it up verbally and told them what the operations or classes of work were in other sections. Since reorganization of the Bureau of Chemistry we have had a meeting of all the inspectors in the Eastern District. We held that in New York last November or October and had all the inspectors there and had a little over a two days session of real interesting work. We took up every phase of the inspection work and asked them to indicate those things they would like to discuss to promote efficiency, and we had a session there that lasted well into the night. We discussed those questions together. We let them make plans or suggestions. They felt to a great extent that they could do certain phases of headquarters work better than it was being done. We encouraged them and let them bring up points of that nature and then explained our reasons for doing it in our way.

DR. HAYWOOD: Under the Insecticide Act, we have our inspectors come in once a year to the Central Office, as I explained, and we go over with them the samples that were collected the previous year. Where there were points that we were pretty sure were not true but could not prove were not true, and it was necessary to make special tests to determine whether they were or not, we direct inspectors to collect special samples. We also, in cases where the man has been previously prosecuted, or corresponded with, inform our inspector all about these things so he will collect a check sample of that man's product to find out whether he has changed his label or the practice was continued after prosecution. In so far as this is concerned we have absolute control over our collections. The work of the inspectors is controlled from the Central Office, but there are certain classes of cases in which we do not tie the inspector too much and make him merely a mechanical agency to follow out directions from Washington. We would curtail his work by such a procedure and we believe he should be allowed in certain classes of cases to collect samples without directions from Washington, I may add also that we have a system by which, when our inspectors who are collecting samples are told to check up the manufacturer's goods, information is promptly sent to every inspector, so that if one inspector catches the sample, the other inspectors are prevented from getting the same sample. A report is made of collection and the report is sent to every other inspector showing him it is not necessary to follow that product any more. But, I want to understand this from Mr. Campbell, is it your belief that the inspector should be absolutely tied down to collect only those samples he is told to collect from Washington, or don't you think they should use some discretion of their own.

MR. CAMPBELL: I did not mean to give that impression at all. You will find out that if you have a fairly large force, say fifty men, some are men of very good judgment. You have to know each individual inspector and what he is capable of doing. It is necessary, in order to get the maximum value, to put them in places where they will work to the best advantage, and we have some that do not possess the judgment that some of the others do, and who are not so energetic and have not the same initiative. There are some sections where no manufacturing is done. That territory should not be neglected. It is necessary to have an inspector there. We try to select for such a territory a man who is discriminating and cautious but his operations are not of a character requiring that degree and type of initiative needed, for instance, in a manufacturing section. I don't mean that the inspector should not use any discretion. I was merely seeking to emphasize the details of the essential points and not take up questions peculiar to our own work and of no interest to anyone else. In the Eastern District, the work is divided into laboratory territories, with laboratories at Washington and other cities, and one at Porto Rico. There is no inspector stationed there. The proper way to do inspection work is to require of the inspectors knowledge of the practices of the various firms in their territory. If you have satisfactory cooperation between the inspectors in charge of the different territories, it is practicable to proceed with reason to the collection of samples that you never know anything at all about it. For instance, the inspector in New York will find that a firm there is putting out a product unquestionably adulterated. It is getting wine from California and artificially carbonating it and labeling it "champagne". That inspector will write to the inspector in the territory to which these goods are shipped, and the latter inspector at the time he collects the sample will transmit the reasons which prompted collection of it. I don't want to place any handicap upon any inspector or prevent him from exercising that type of initiative which should be displayed, but I do want him to have his work done in cooperation with the others and intelligently. I only wanted to emphasize that.

DR. HAYWOOD: That answers my question.

MR. CAMPBELL: They will never be much as inspectors if they do not display initiative.

MR. HENDERSON: I would like to ask Mr. Campbell a question along this line: I understand that Mr. Campbell during the past six months instituted certain methods which have resulted in greatly reducing the time between the collection of the sample and reference of the case to the Solicitor's Office for prosecution. I was wondering whether any of that reform had to do with the collection of the evidence or whether the delays were occasioned in the Washington office.

MR. CAMPBELL: I would not assume for a moment that I have adopted any method that would bring about that type of good. One thing that has been an eye-sore to us in our own office and perhaps to the Bureau, and certainly I know to the Solicitor's Office, has been the hoary condition of a number of cases that have been referred for prosecution under the Food and Drugs Act. One thing that I have sought to do, after there was a reorganization of the Bureau, was to adopt methods in the office itself which would permit an expeditious handling of the cases there. There are some cases that you can't handle promptly. There are some cases that no matter how much you try to speed up, you can't do it. I had a case in the office yesterday that came up in that way. In the first place, I don't think I am responsible

for the promptness in preparation of the cases that the Solicitor's Office may have received soon after the sample had been collected. I believe that that credit which may belong to the district is due to the clerk in our office who has charge of those things. He makes it his business to jump on everybody who takes a case out and keeps it for any length of time. We are now afraid to keep a case on our desks any longer than absolutely necessary. Some cases are simple and can be handled quickly, and a citation immediately issued to the party from whom the sample is collected. There are some cases that are not so simple. There are cases where you are not quite sure about the conclusions of the chemist, where you believe that before you proceed to the development of the prosecution criminally against a man, that you ought to be absolutely sure of your position; this will involve frequently the collection of extra samples. In the course of the hearings, manufacturers often want the hearings continued. These hearings are taken at the convenience of the manufacturers, and while we have always sought to expedite the handling of that as much as possible, I don't think that we can go to the extent of being so exacting as not to give them the opportunity of making the full statement that they want to, and we have continued the hearings. Frequently there will be some type of evidence that hasn't been collected properly at the beginning, and it will be necessary to take the entire matter up and make an investigation so as to complete the case before it is referred to the Solicitor's Office. If you send it there incomplete, it is going to come back. So I don't think that there is any particular plan adopted at all, Mr. Henderson, except just the arrangement that we have made for handling in the office itself expeditiously, and insisting on the same practice upon the part of the laboratories, all cases which are developed.

DR. HAYWOOD: Mr. Campbell has brought up a matter that is very important, and although it may not come under the discussion of this head, it is important enough to take up right at this time. One of the reasons why the cases under the Insecticide Act--and I feel sure under the Food and Drugs Act--are delayed unduly at times, or at least one of the circumstances that tends toward the undue delay is manufacturers asking for postponement of hearings. How far does the Solicitor feel that we are justified in postponing the man's hearing. We will have the hearing set for him. He will ask for a postponement of three weeks; somebody is out of town or gone abroad. The three weeks ends, and he asks for a postponement of a couple more weeks. We have been pretty easy about that, let him answer pretty much when he pleased if it wasn't unduly delayed. Yet between the time the case is set for citation and the time it is reported back to the Board, sometimes a couple of months elapse. If we held the manufacturer to an immediate answer, the citation could be returned in three weeks at the most. Many of them it takes over two months. How far, are we justified in your view, Mr. Solicitor, in allowing a man time to answer that way, even though it unduly puts off the consideration of the case and the reference of it to the United States Attorney?

MR. CAFFEY: I feel very strongly that opportunities for hearing should be afforded to a citizen before you make up your mind whether he has committed an offense. I think there are several distinct advantages. In the first place, you have more facts before you after you have heard his side. You have more opportunity to find out whether you have overlooked something or have made an error. In the second place, I think the benefits resulting from the act itself are very much greater when you give them a hearing.

It is only human nature. A man feels better, even though you decide against him, if you have given him a full chance to say what he wanted to say. Where delays occur for reasons such as that, I don't believe that we are going to suffer much with the courts where we let the courts know what the reasons are for the delay. It is only a matter of judgment in the particular cases whether the application is purely for delay or whether it is frivolous or whether there is some substantial reason for it. But my own feeling about it is that, as a matter of administration, you can afford to be rather liberal-minded towards the applications.

DR. HAYWOOD: That is the way I have always felt about it, but still it causes considerable delay in reporting cases.

DR. PALMER: I would like to ask Mr. Campbell whether the inspectors can get access to the factories.

MR. CAMPBELL: We have had difficulty but that has been rather remote in general. The inspectors when they first started out were informed that they had no authority whatever to enter an establishment except with the permission and with the consent of the manufacturer. We haven't experienced the difficulty with that that we did formerly. That is purely a personal proposition. I have preached to the inspectors in various territories that access to the factory would depend upon the efficiency with which they did their work and the manner in which they conducted themselves when they got access to such factories. When they went to a place, they always wanted to be in a position to go there again. Of course, there are exceptions to that rule, as for instance, a man whom you know very well to be malicious in the nature and conduct of the business, and it is only necessary to go to his place once. But ordinarily that is not the case. We are having very little difficulty in getting access to practically all the manufacturing establishments in the country, and that is done absolutely upon the personal equation of the inspector.

DR. PALMER: How about cold storage plants?

MR. CAMPBELL: We have had more difficulty there than anywhere else. We don't have as much difficulty as we once had. One of the biggest storage plants in Brooklyn, New York, declined to permit an inspector who went down there to make an inspection of the place for the purpose of looking over a particular consignment of goods and collecting a sample. The manager of that cold storage plant told him, "No, I haven't got time to bother with you. Go ahead and sell your papers. I don't want to be annoyed with you at all. I am not going to let anybody see any goods that I have stored here. They are my customers' goods, and if I give you access to this plant, I would be building for myself reasons for losing patronage, and I am not going to do it." This was an inspector who was a man of pretty good size, and he had some Irish blood in him. He had gone around under specific directions because we knew of a consignment of goods that had been prepared in New Jersey and shipped to this place for storage, subject to withdrawal and disposition as the consignees wanted to make sales. We told him wherein the goods were adulterated and asked him to collect a sample. After he had been turned down that way, and tried to reason with the manager of the plant, he left them and said, "I don't think this will be the last of this matter at all, and I am quite sure you are making a mistake. You are contracting trouble for yourself." He went to the District Attorney's office, and as he happened to know the Assistant District Attorney personally very well, he was willing to do anything that he could to expedite or facilitate for this inspector the carrying out of the instructions which he

received from the office. He returned subsequently to the storage plant - having been deputized meanwhile as a marshal-- and he had with him a subpoena duces tecum requiring this concern to come into the District Attorney's office and bring with them all the records that they had in their office. This action had been taken on the best information which the inspector could acquire that there had been an offense committed under the Food and Drugs Act. The president of the concern was called, and they had a hasty meeting of the Board of Directors. They said, "Here, this will take three days to get these records up there. It will put us out of business for two or three days." The inspector said, "I know that; but that is not my fault. I gave you an opportunity to let this inspection be made without any particular trouble to yourself because we are not anxious to hurt your business in any fashion, and it was with that object in view that I reasoned with you for a long time." Well, they finally concluded they would let him have the run of that plant, and we never had any more trouble with them at all. We don't have much trouble with the cold storage plants.

DR. PALMER: That is working under extremely favorable circumstances. Supposing you had to examine goods in the Central Market---

MR. CAMPBELL: We have done that several times. We first went down to the officials of the cold storage plant. We told them that we were food and drugs inspectors and that they had some consignments of eggs that we wanted to see. We didn't want to disturb them. They have always let us do it. There has been some little parley, but they have usually done it.

MR. HENDERSON: I would like to ask Mr. Campbell whether he thinks it would be an advantage in the work of the inspection force if there were a regulation or a law compelling owners of factories, cold storage plants and other such places to permit inspectors to visit them, or whether it is an advantage to have them do it with the consent of the people who own those places.

MR. CAMPBELL: It would be to our advantage if we had that authority specifically. That would give us access to those establishments that for one reason or another don't want us to come in there, and the manufacturing firm that doesn't want an inspector to come into its plant usually has some good reason besides the annoyance of the inspector. But on the whole I am rather dubious about the advantage ultimately that would accrue from the passage of such an amendment to the law. I don't know whether I have discussed it with you before, but I certainly have with some of the men in the Solicitor's Office. We found such little trouble in getting into most of the plants that I didn't think it would be worth while to make an issue on that point. The other day we sent one of the men from a New York laboratory to make a study of the vinegar manufacturing conditions. There has been a great deal of adulteration of vinegar, and it is a matter that is hard to detect. We know very well that there are some cases where sophistication is carried on so cleverly that we can't in the light of the knowledge that we have now detect the adulteration in the laboratories. We are going into the thing from the foundation up, and putting a man who is preeminently qualified for that work out in the field to study thoroughly the entire situation. He went to a manufacturing plant in Philadelphia the other day. I didn't know about this at the time, but they turned him down flat. He was absolutely denied any entry at all to the place by a subordinate official in

charge. He went ahead and said nothing about it, and yesterday I received a letter from that manufacturing establishment stating that they were sorry that this happened to take place, that he had been annoyed a great deal by students of the University of Pennsylvania coming there to get samples of his vinegar stock simply for laboratory experimental work, and that he had told his assistant to stop that thing. He said that the assistant was carrying out instructions, and he was sorry that the occurrence had taken place, and wanted us to understand that his factory was open to any inspectors at any time, and he hoped that someone would come back to make that inspection at our own convenience. I am reciting that merely to show that on the part of most of the manufacturers, there is a disposition to afford to us unrestricted and absolutely free access and run of their place. It is not bad at all. I don't know whether the advantage which would be gained in having a legal right of entry would be sufficient to justify any possible feeling that there might be created as a result of this compulsory authority on the part of those who now voluntarily permit entry. I don't know whether the disadvantage would overcome the advantage. As long as we are not hindered very materially in that work, I don't see much need of it.

MR. WILLIAMS: Does anyone else want to say anything about this subject?

MR. MARLATT: I have been very much interested in the several aspects of this discussion, and particularly the matter of the preparation by the Solicitor's office of a statement or form showing the character of evidence which should be secured. If we had such forms applying to our different subjects of regulation, it would enable our inspectors to present the cases properly. They would certainly be very useful.

MR. WILLIAMS: If there is no one else who would like to say anything on #3, we will pass to #4, "Methods of reviewing the evidence in Washington and determining whether offenses warranting prosecution have been committed".

MR. CAFFEY: Before you enter upon the discussion of that particular subject I would like to say something to the meeting. This program was gotten out, as I explained the other day - the purpose I had in mind was to make a memorandum of the various points I wanted to bring out before the meeting adjourned. The meeting has run along at considerable length and it is very interesting to me, but I do not want to see it run to such a length as it bores any of the participants here. We have spent two and a half days and are on subject #3 of the discussion. In the first three, we have covered a good many matters embodied in the other subdivisions. While we have this feeling and probably are interested, I should not like to have discussion curtailed. It is helpful for one Bureau to give its views to another Bureau. I would like to see it continue until everybody feels he has all he wants. I was talking to Mr. Williams this morning as to whether it would be well to call on people. Of course in the beginning everybody was called on to speak, in order to get a sort of general view from every participant in the conference. If any one has any suggestions I wish they would offer them. So far as I am concerned I would be glad to see it go on for several days, if the participants wish it.

MR. WILLIAMS: Has anyone any suggestions as to the future conduct of the conference.

MR. MARLATT: It seems to me, Mr. Chairman, that the collecting of evidence which we discussed this morning is a matter of great importance to the non-legal part of the regulatory force of the Department and that most of these other questions are matters which pertain largely to the Solicitor's office. The methods of handling cases and the presentation of cases pertain to the Solicitor's Office, and possibly we can go along faster on the rest of the discussion. I don't want to put speed on, however, if the others feel they are getting full value.

MR. CAFFEY: Well, I don't know that I catch the meaning of your suggestion. I agree that these are matters that the Solicitor's Office is most interested in. My conception of the Solicitor's Office is that we are your counsel; you are our clients, and it takes team work to get the best results. We will always be glad to have suggestions from your office as to matters in our office, just as we feel free to make suggestions to you. I don't want you to feel that we have the final word. We want you to feel it is cooperative or team work.

MR. MARLATT: I really had the point of view that the collection of evidence is left to the Bureaus and after the collection of evidence the case is made out and submitted to you and thereafter the conduct of that case is largely in your hands.

MR. CAFFEY: That is true.

MR. MARLATT: So that in our work our province would be largely the collection of evidence and determining in our own minds if that evidence warranted action. Of course all of these talks had bearing on that point.

MR. WILLIAMS: This subject #4 is one in which each bureau is primarily interested long before the Solicitor even sees the case at all, and it appears to me to be a very important subject and one that an exchange of views between the representatives of the bureaus may result in some very beneficial suggestions. I would like to hear from Mr. Shibley on this subject #4.

TOPIC IV.

Methods of reviewing the evidence in Washington and determining whether offenses warranting prosecution have been committed.

MR. SHIBLEY: Mr. Chairman, the reviewing of evidence in a case under the Insecticide Act occurs at several different stages as the case is developed. The work involves many details both from the standpoint of the inspection evidence and scientific evidence. This initial review is a very important one both from the standpoint of the inspection work and the scientific work. An inspector collects a sample. The sample is sent by express and received at the storeroom of the Executive Office of the Board. A careful inspection is made of the sample by the sample custodian to see that seals are intact, that it is not broken or leaking in any way and a record made accordingly. Under separate cover the inspector transmits his inspection report, which is received at the Executive Office of the Board. Immediately on receipt the entire report is given a critical review to determine first, Whether the product comes within the purview of the act from standpoint of interstate shipment; or being manufactured, sold or offered for sale in the District of Columbia or the Territories; or offered for export to a foreign country, and second, whether report and accompanying records of sale and shipment are complete and correct.

If any defects are found to exist the facts are presented to the Board, to enable it to recommend permanent abeyance if the facts warrant, thereby eliminating useless scientific work.

After Board action to assign the sample for analysis and test to the several branches of the work, the Executive Office makes a review of all previous cases based on the same article or similar article made by the same manufacturer and a compilation of the facts relative to each case is made in a form entitled "Record of Previous Action." Each case is identified by its domestic number, the date of shipment and collection of each sample is given, and the present status of case shown, together with a concise statement of any charges preferred and any pertinent remarks.

A copy of this "Record of Previous Action" is sent to each member of the Board having to do with the analysis or test of the sample. Before any scientific work is undertaken the Board member or his assistants review the facts presented in the "Record of Previous Action" cases and on request to the Executive Office files of the cases themselves are furnished. An opportunity is thus afforded to eliminate the duplication of analytical and testing work on the sample in the event that the "Record" shows another case in course of development or facts are presented which warrant dropping the case without further work. Any facts which appear to warrant dropping the case at this stage are duly presented to the Board for consideration and appropriate action. The "Record of Previous Action" accompanies a case through all stages of development and each time the case passes through the Executive Office, (and also at any time upon request of a member of the Board) the "Record" is reviewed and brought up to date, thus enabling each individual member of the Board as well as the Board as a whole to decide in respect to the disposition to be made of the case in the light of past actions and facts.

Mr. Campbell spoke of the case in New York City where the services of the United States Attorney were used to induce the owner of a warehouse to permit an inspector to enter the house in connection with his inspection work. There have been a number of cases under the Insecticide Act in which the dealers refused to cooperate with the inspector in the matter of furnishing records to establish interstate delivery. The dealers have been perfectly willing to sell the sample desired, but refused to give the inspector any evidence to establish interstate shipment. A recent case involved a very important sample and the inspector wired for instructions, and I advised him to drop the matter. It occurs to me that the United States Attorney at Grand Rapids may have been of service. This case is a somewhat different proposition from the one mentioned by Mr. Campbell. If Mr. Campbell has had a case similar to the Grand Rapids case, I would appreciate it if he will state what was done.

MR. CAFFEY: Was your trouble with the sample or the evidence of shipment?

MR. SHIBLEY: The sample was all right. The dealer is willing to make the sale.

MR. CAFFEY: Did you have morally convincing evidence that the goods had been received in interstate commerce?

MR. SHIBLEY: Yes. That dealer was not friendly. He said he would not give him any idea of the time of shipment or anything about it. If he had the inspector could have gone to the railroad company and gotten satisfactory records. The dealer would not talk to the inspector about the records.

MR. CAFFEY: Now you had adequate redress without going to the United States Attorney. If you were convinced that that was an interstate shipment and that the dealer was withholding information of the violation, then we could have reported that case to the United States Attorney, explaining to him the lack of evidence and why we had been unable to obtain it, and suggesting that he procure it by proceeding before the grand jury.

MR. SHIBLEY: The dealer might not have received the sample in interstate commerce. He may have received it from a jobber.

MR. CAFFEY: It might have turned out that it was not an interstate shipment; therefore, you could not get an indictment. But you can get any kind of evidence; you have process of the court at your disposal to get any evidence that exists. Put those witnesses under oath before the grand jury and if they testify falsely they can be indicted for perjury.

MR. SHIBLEY: Our inspectors do not like to threaten them. They are instructed to be very decent to dealers.

MR. CAFFEY: He should not make any threat if he is going to do that. He should take it up with you. Then come over and talk to us and we will be glad to tell you how the evidence can be secured.

MR. SHIBLEY: That is one of the points straightened out in my mind. The question under discussion is the procedure in the handling of cases?

MR. WILLIAMS: No. 4.

MR. SHIBLEY: This is a rather broad subject. I have explained the initial reviews before the analyses and test is begun. The sample is duly analyzed and tested, and later the reports of the results of examination are transmitted to the Executive Office. The several reports are assembled and submitted to the Chairman of the Board. He reviews the whole case carefully in advance of presentation to the Board. The case is next considered at the executive session of the Board, and decision reached as to whether citation shall issue, or whether case be taken up by correspondence. There are several other different routes a case may take. I would suggest that Dr. Haywood take up the matter at this point.

MR. WILLIAMS: Possibly Dr. Haywood can explain the matter.

DR. HAYWOOD: In a very general statement I will say that after each branch of the service has done its work on the sample and decided wherein it is adulterated or misbranded, they all independently outline their charges against the product from their respective points of view. It then goes to the chairman, and it is his duty to go over the case; see if he thinks, first of all, that the different lines have overlapped in their charges, and edit the charges if any overlap. Then, when the chairman thinks there are any trivial charges, he makes a general write up

of the case recommending that these charges be dropped. Now that case, in its complete form, is presented to the Board and if the chairman is wrong in considering charges as trivial that some member considers are not trivial - there may be a change, but usually it goes through as drafted by the Chairman. I will only follow out the prosecuted case because that is the one in which you will be interested. The case is then set for citation. There is the place where we have delay. The manufacturer will ask for a postponement and ask for it a second and perhaps a third time, and it has been our practice in almost every case to give him postponements if he asks them. It comes back to us after citation and then goes to the member of the Board who initiated the case, who makes a recommendation on the case as to whether it should be prosecuted or not, and perhaps makes a recommendation that certain charges should be dropped because the manufacturer has given adequate and sufficient explanation of why he made these statements that may be false and misleading. Therefore, we try to sift down to those charges that are of a flagrant character. The case then goes to each and every member of the Board for his recommendation. It may be that everybody will merely say, "concur" with the original recommendations. It may be that the Entomology or Plant Pathology or Animal Industry or Chemistry representative will consider that the board member making the first recommendation has dropped some charges that he considers important. If so, he puts a memorandum on the case. Then that case is considered by the Board in Board meeting. When everybody has agreed there is no discussion. If there is a disagreement, we carefully thrash it out and decide by full vote of the Board, majority rule. The case is then ready for prosecution and is referred to the Solicitor's office through Mr. Shibley, who has told you all down to that. We may at that time, and usually do, if we think that expert witnesses will be needed, make a recommendation to that effect, and along which lines we think they will be needed, or it may be we will find expert witnesses are not needed, then we do not make any recommendation, and from that point the case is handled in the Solicitor's office. It is our duty to send witnesses to the trial - to take care that all experts are there to prove our charges, and if the manufacturer then writes further relative to the case, or the United States Attorney writes further that the case should be dismissed, we prepare a memorandum to the Solicitor telling him why the case should be prosecuted, and he takes it up with the United States Attorney telling him wherein the law has been flagrantly violated and he is sure it should be prosecuted. I would say that, as the great general rule, it is very seldom that we take the position that the case should be withdrawn, but there are unusual instances in which we do make that recommendation. It is only where we feel the reason is adequate and I am glad to say the Solicitor's Office usually agrees with us when we do take this position.

MR. WILLIAMS: Doctor, do you use the Solicitor's Office freely and informally if you have got any doubt among the members of your Board as to whether certain facts come within the law?

DR. HAYWOOD: We use them very freely and very informally, and it is very common for us to ask Mr. Gates to step over for fifteen minutes or half an hour and talk it over with us. There are certain cases where we have asked the Solicitor to appear before our Board to have an informal discussion of the case and tell us if we are going too far or not going far enough in certain matters. We are using the Solicitor's Office very informally.

MR. CAFFEY: Very agreeable to us.

DR. PALMER: The review of the evidence in our work is rather a simple matter, but has this side issue, as I have stated before, that every one of our cases practically presupposes a previous State law violation. We first review to see how that case can best be handled to accomplish the objects which we have in view, namely, to prevent future violations, not necessarily to get the fine. Very frequently in a large proportion of our cases, the evidence comes in in extremely incomplete form, possibly in the form of a complaint. If it is a clear case of an interstate shipment, the violation can be proceeded on to complete the case by notifying the correspondent or the inspector to get the necessary evidence of interstate shipment, way-bills, statement as to the contents of the package, and all links in the evidence necessary to establish a complete case. On the other hand, there are other cases which come in in the form of a complaint we will say from a State officer that certain birds are being sold in his State which have been imported from abroad and that we are supposed to know are sold in violation of the State law. We do know it. And in every case when the application for the permit is made, we usually require the importer to first obtain a permit from the State officer that those birds can be had in possession or sold according to the State law before we grant the importation. Occasionally the State officers pass the formal importation and allow the birds to come in, with the result that there are future complaints. We have no direct authority to prevent the importation of birds unless it is clearly injurious. The most expeditious method of proceeding in those cases is to allow the birds to come in and place the evidence in the possession of State authorities that these birds are now in possession in violation of the State law, whereupon they are usually promptly seized and the case expeditiously closed under the State law within a few weeks. Our aim is to discriminate so far as possible between the trivial cases, the cases in which there is very little chance of succeeding and the defendants ever brought to trial, and those which are really important prosecutions. My own idea has been never to report a case which was clearly trivial unless it was a matter for a test case or some other object to be gained, and not simply report it to make one more case, and not to report a case which we were pretty sure we would fall down on if we went into court. But in some instances cases have been reported which I think should not have been reported, and the result is we have not been successful, or the results have not been what we should have gotten. One other object we have is to obtain a skeleton of the evidence sufficient to secure conviction, but not necessarily to obtain all the collateral evidence that might be obtained, because it is expensive, our field force is somewhat small, and delays ensued. I think in some cases the Solicitor's Office has been rather spoiled in that respect because in certain instances we have been able to furnish evidence showing an interstate shipment, the statement of an officer who made the examination of the package, the tag on the box, the copy of the way-bill of the railroad or express company showing exact date, place and so on, details of shipment and marking, the express receipt showing date of receipt at the consignee's office, the letters from the consignee to the shipper relating to this particular consignment, transcript from the books of the consignee showing the amount of same and the receipted check. It is absolutely a complete chain of evidence, but it is only in fortunate circumstances that we could obtain such a chain. We don't believe it is necessary nine times out of ten. There may be no check. There may be no correspondence because that particular scheme has been worked out by which correspondence could be obviated.

There may be no record of the receipt, because the record of receipt has been destroyed. It may be impossible to obtain a statement of the particular man who delivered the goods to the transportation company because he is no longer in service. The United States Attorney usually in trying that case in court will establish such facts as are necessary and will go on with it. I felt sometimes that the Solicitor's Office expects a little too much of us in asking if we could obtain this, that and the other aid, which we would be glad to obtain but which the importance of the case doesn't warrant us in spending time and expense in securing, merely to be perfectly sure that in a hard contested case in court we could furnish every link in the evidence. In many of our cases we know beforehand that it is only necessary to bring the defendant in court and he is ready and anxious to plead guilty. In those cases only a skeleton of the facts is what the United States Attorney requires. Just what I wish to say is that we review the case not simply as a simple case with the possibility of securing conviction, but how that case can best be handled with the ulterior object of accomplishing the purpose of the law. We have had cases where the evidence showed we were unable to complete the evidence of an interstate shipment by express for the reason that just about the time the package was to be placed in the express car an officer happened along and the shipper threw it into the mail car, and of course the mail clerk would not allow a local officer to enter the mail car, and it was brought to its destination, and there was no direct violation. Such cases have been taken up with the Post Office Department and seen to that such a thing would not happen again. There are cases in which rural route carriers insisted in evading the law, cases in which dining car employees evaded the law. Right there, I wish to say that usually in the case of evidence indicating a violation of interstate shipments in the dining car service, we have not gone into court. It is very much better to furnish the evidence direct to the head officers of the Pullman Company, the superintendent in charge of that district, and the practice stops once and for all. It would drag on for months in a case and get a small fine against a particular conductor.

MR. WILLIAMS: Mr. Campbell, we would like to hear from you about this subject if you can give us any information as to how your Bureau handles that fourth topic.

MR. CAMPBELL: Mr. Williams, I don't want to take up all the time to talk about this. I don't know but what Dr. Alsberg in his talk here yesterday handled that. As a matter of fact, the eastern district has very little to do with that phase of the work that requires communication with the Solicitor's Office. That is done by the Bureau proper. In the consideration of those cases, to determine whether or not we have a case that presents a substantial violation of law, it is necessary first to consider the report of the laboratory. There is no need of going into cases where the evidence of adulteration is one that the chemist himself is the witness to support. Incidentally, after the examination of the sample at the laboratory, the laboratory chief himself is required in every single instance after indicating his conclusions to make a recommendation. That recommendation comes to our office. If we concur in the recommendation that he has made, instructions are issued immediately for the issuance of a citation. If we don't concur in the conclusions of the laboratory, we take it up with them by correspondence. In those cases where the district chief knows from the experience that he has had that the case is one that will involve some novel issue and he is not willing to take the responsibility or to commit

the Bureau and the Department to an expression that this is a violation of the law, in such instances he transmits to the Bureau such recommendation and asks for instructions.

MR. CAFFEY: You don't consider that by issuing the citation, you committed the Bureau to regard this as a violation?

MR. CAMPBELL: No, as a matter of fact there are a great many cases where the issuance of a citation would be accepted by the manufacturer as an expression of that kind, and where the nature of the question is such that the Bureau itself would prefer not to have at that particular time a citation issued. That is a question more of administrative policy than anything else, and where there is that element of doubt present, it is the duty of the district chief then to transmit the case to the Bureau and ask for instructions. Those cases, however, are the exception rather than the usual. After the conclusions of the laboratory chief and his recommendation are made, we take the matter up by correspondence for discussion with the laboratory chief. We want to have always a unanimous action in those cases. There are a great many instances where the conclusion of the laboratory chief is apparently correct, but because of information that we may be in a position to acquire that he did not have at the time, we think that citation should not issue, and then we make a statement of all of those facts and ask him if he is still of the opinion that citation should issue. Furthermore, we ask the laboratories to prepare and submit to us the kind of charge that they think would cover that case. If that charge is correct, the only thing to do then is to indicate the acceptance of it and issue the citation on that basis. If it is not correct, the laboratory is sent a copy of the amended citation. After the citation has been issued, the hearing, if personal appearance is made, is taken down and a transcript of that is submitted. A great many times statements will be made at the hearing that throw an entirely different light on the case than we had on it before that hearing was held.

MR. CAFFEY: What proportion of the hearings are attended by the persons cited or their representatives?

MR. CAMPBELL: Well, considerably the majority of them; more than the majority of them. Sometimes they will answer in writing and sometimes personally.

MR. CAFFEY: Do any considerable percentage ignore the citation?

MR. CAMPBELL: No, not very many of them do that. As a matter of fact, those citations are sent out by registered mail and we get the return receipt card and we have that to show that they have been afforded an opportunity to appear. If they don't care to avail themselves of that opportunity, that is their own fault. But usually, if we don't get any answer from them, we write them again and say that the date indicated for this hearing was such and such a time; no appearance was made by letter or otherwise. And incidentally the copy of this citation has a statement on the back of it stating that it is not necessary to make an appearance in person. We let them know that it is not a court procedure at that stage; it is merely an indication to them of an opportunity to make any statement that they desire to make. If we don't get an answer from them, we usually take it up by correspondence and insist that they should take advantage of their opportunity. We would rather have their statement

than not. After the hearing has been taken and a transcript submitted, the laboratory makes a recommendation discussing the phases of the case that have been presented then. If the manufacturer states--that he himself recognized before he received his citation that his label was not correct and that he as a matter of fact might be technically committing a violation of the law--they are not disposed to admit much more than that--but he has changed his label or altered his practices, we make an inspection to verify that statement. That is one of the factors that goes to make a delay in those cases. One of our biggest delays is the handling of the case between the date upon which the laboratory was directed to issue a citation and the receipt of the report from that laboratory after the hearing has been held. The laboratory after transmitting that hearing with their recommendation is relieved of that case so far as any further consideration is concerned, and it is taken up then at the office. We have attempted in the course of all of the work to procure complete reports of the business, of the manufacturing trade, factory inspection, and in that connection we don't file only the information that we acquire in the course of the visit of some particular inspector, but we file with that everything that would be of interest to us in the consideration of the practices of that manufacturer or any case that may be developed against him subsequently. We try to have a factory inspection report filed that as a matter of fact is an encyclopedia of the manufacturing industry of the section. A copy of that report is always in the laboratory that has jurisdiction over that particular territory. If we have the report on that concern, the laboratory receives instructions to issue a citation. It is then the inspector's duty, if it is possible for him to do it, to go out and make a factory inspection report. Then we consider that case in the light of the past experience that we have had with that firm also. It may be possible that there is an unquestioned violation of the law. It may be possible that the evidence to support it is conclusive and satisfactory. But on the other hand, it may be possible that this is one of the most equitable firms that we know of, a firm whose business has been without question in the past, a firm samples of whose output we have examined and found no objection to at all. We consider all of the cases against those firms that we have had pending or disposed of, and then make our recommendation in the light of that. Those recommendations we don't attempt to put in the form of a long discussion. We try to have them just as brief as possible, because in the first place there is a large number of cases to be handled, and I would rather get in just two, three or four sentences the real reason for taking the action that we do take and have the case itself sufficiently complete that any one who reviews that case can draw his own conclusions from it. The consideration of the case in the Bureau is a matter, of course, that I am not prepared to discuss. It is reviewed, however, by the expert in the Bureau on that particular product, and if his report is in accord with our own for prosecution, it then goes to the chief or the designated assistant chief in the Bureau for consideration and preparation for transmission to you. If our report is for an abatement of the case and no prosecution, it is referred to the expert, and if he agrees with that, the case is automatically disposed of. If there is a difference of opinion, however, the expert in the Bureau will then communicate with the district chief and discuss the matter in such communication indicating his reasons for believing that a certain procedure should be inaugurated in respect to that case, and they try to get together and have a unanimous opinion before it is referred to the Bureau for consideration. If they don't do it, however, if the

district chief believes that his recommendations should stand and the expert of the Bureau believes that his should stand, it is referred to the Bureau with a statement of those differences, and the chief and the assistant chief of the Bureau after consideration should then determine whether or not it should be further referred. I believe that is briefly the procedure.

MR. CAFFEY: Mr. Campbell, in about what percentage of the cases in which samples are collected do you issue citation?

MR. CAMPBELL: It is difficult to make an accurate statement of that, Col. Caffey. You are speaking only of those samples collected for the purpose of inaugurating prosecution, the official samples. There is nothing like one-half of the cases in which samples are collected that citations are issued and there was a bigger percentage some time ago, Violations were more prevalent and all violations more obvious, and more easily maintained. There is not one-half of the cases in which we get official samples that citations are issued.

MR. CAFFEY: Where citations have issued in which prosecutions are maintained?

MR. CAMPBELL: I can only speak of the Eastern District. Fifty per cent approximately of the cases where we have collected samples and issued citations, we recommend prosecution on. In a number of these cases citation is issued not with the idea that the case is to be prosecuted. There are a great many firms that are perfectly willing to cease the practice if their attention is brought to the fact that they are violating the law. It becomes a question of policy whether it should be taken up by correspondence on the part of the Bureau or in official capacity; usually the gravity of the offense decides that matter. You may decide that it is not to be referred to the Department of Justice for the reason that the hearing emphasizes the things that the manufacturer may have omitted and gives him an opportunity to explain what has happened and give assurances that it will not happen again. Inaa great many instances citations are issued with that sort of object in view and that reduces the number of cases recommended for prosecution.

MR. CAFFEY: At the hearing he makes an explanation.

MR. CAMPBELL: Yes.

MR. CAFFEY: I got the impression some time ago that for an extended period your prosecutions covered about ten per cent of the cases in which samples were collected,-that were recommended for prosecution.

MR. CAMPBELL: You see from the statement I made there is about 25%, and that is only approximately because from my own work I have not gone into figures at all and only speak approximately from the standpoint of the District alone. If fifty per cent of the samples are placed in permanent abeyance without more ado and 50% of the rest are recommended for prosecution, that would be 25% in which we formally make recommendation for prosecution. The Bureau tables a great many cases on which we recommend prosecution and I imagine itwould be about 12% of the samples originally collected on which prosecution is finally brought.

MR. CAFFEY: What I was getting at was the question of time that elapses between the collection of the sample and transmission of the case to the Department of Justice. You have spent varying amounts of time on those cases in which there were citations and no prosecutions, and another amount of time on each case in which there was a sample collected and on which there was not even citation. That has got to be taken into account in explanation of the length of time between the commission of the offense and forwarding to the Department of Justice.

MR. CAMPBELL: I do not think there is any question in the world but that the handling of the cases under the Food and Drugs Act can be expedited considerably and I think Dr. Alsberg and Mr. Jones are considering that very fact. You have no idea of the amount of delay incurred if you take these cases up with that thoroughness I have just indicated in the statement, that it would be advisable to make an investigation of the manufacturer's establishment to see if he was using new labels on the product considered for issuance of citation. The inspector may be in a remote section of the territory or may be at the trial of a case. Frequently he may be away for two or three weeks from the headquarters. All these things which tend to prolong the life of cases, we hope to kill and transmit them to you promptly in furtherance of good business methods; but I believe that the importance of acquiring that kind of information justifies the age of the cases. When the case is transmitted to the office, to review that firm's record requires a large amount of clerical work. It finally resolves itself into the question of having a sufficient number of clerks to do a certain amount of work. If we have that I cannot think of any very serious reason for allowing these cases to be antiquated before they come to you. I believe that, in the interests of good business methods, the entire bureau will exert every effort to get cases to you as soon after collection of sample as possible.

MR. CAFFEY: We had one in which the shipment occurred the 16th of December, 1915, and the defendant pleaded guilty on the 16th of January, 1916.

MR. HENDERSON: Do you include in each case a reference to the inspector's letter in making recommendation?

MR. CAMPBELL: No. Not in every case. There is a great deal of work done in these cases not apparent on the face. If we have a case which is manifestly a violation of the law, the only thing we have to take into court is the testimony of the analyst and that is apparent on the record itself, and our knowledge of the practices of the firm shows that it has always been a firm that has been violating the law with more or less regularity.

DR. PALMER: I think there is one point and that is reviewing officers who are not familiar with the actual details of the case are sometimes misled by the statements and the papers. I can illustrate by giving an example. Last year, we were concerned with the shipment of game from Southeastern Missouri. We had a very active inspector on the ground who conceived the idea that most of the shipments of water fowl were going out as turtles. He spent some weeks getting the records of turtle shipments. He reported the matter to the Department and reported them all as cases. As a matter of fact they were merely suspicious. To withdraw that inspector from his station to trace them would have aroused the suspicions of the

shipper. The consignments were traced to Philadelphia and it was some months before we had a man available for work in Philadelphia, and as soon as he could get to it, the inspector in Philadelphia traced all of the shipments and found in every instance the shipments of turtles went to men not handling game birds or poultry and we had no reason to believe they would receive game. It was all negative evidence. There are numerous instances such as this Missouri shipment of game and the question arises, where are all these cases. There is a vast amount of work done in running down clues which result in nothing and which the reviewing officer may think are important by reading the papers, but he has not the full facts and the conditions are not fully understood. For that reason, there is a great amount of negative work connected with making up a case for prosecution.

MR. WILLIAMS: Anyone else have anything to say?

MR. CAFFEY: I want to hear from someone in the B. A. I.

MR. WILLIAMS: Dr. Smith?

DR. SMITH: The reviewing of evidence in the meat inspection cases is a very simple affair. We examine the facts presented by our inspectors in their reports, which are the only evidence that we get, except signed statements from outside persons who are acquainted with the violation. We usually depend on our inspectors exclusively, and if the product is diseased the case is always referred to the Solicitor; but if it is an uninspected article, we usually pass judgment on it ourselves; and if the quantity involved is small and it is the first time the shipper has violated the law, we take the matter up with him by letter; and the second time we find him doing business of this kind we submit the whole matter to the Solicitor's Office. In a nutshell this is the sum and substance of the work.

MR. WILLIAMS: Anyone else anything to say.

MR. RAUB: In answering question 4, the method of reviewing evidence pertaining to the 28 hour cases, I would like to go back some years ago when I was in the field, and at the suggestion of the United States Attorney in Western New York, I took the matter up with the Solicitor's Office when I was in Washington and went over the matter thoroughly, and I found out just what they wanted, and gave him that kind of evidence. I prepared between 1,800 and 2,000 cases in that District in the way indicated by the Solicitor's Office, and none of the cases were returned. The information was just what he wanted. In instructing the inspectors at the different stations, I tried to give them the benefit of what I had received from the Solicitor's Office. Our cases coming in now, I believe, are much simpler than those under the Insecticide or the Food and Drugs Act. They do not carry all that weight of evidence, and also, to a great extent, there is a similarity in all our cases. In going over the cases here which come in from the inspectors in the field, I look them through carefully to see that all questions are answered on our form, to see if they have established the interstate shipment, or to see which railroad is involved, which one or ones are to be prosecuted, and that the time limit was in fact exceeded; to see if the proper exhibits are there, confirming the loading time and origin of the car and route involved. If these questions are not answered before the case is sent over to the Solicitor's Office, I send out letters to the inspectors in charge at the various stations involved and get replies covering such questions. At the same time I iron out any conflict of statements which may appear, and they quite often appear

between one man's letter and another man's letter and between the shipper and whoever is concerned. That is then gone over again and a memorandum prepared simply stating the facts briefly, showing why the violation is reported, what railroad, the time of confinement, and simply a short statement as to why it is recommended for prosecution. I believe the 28 hour violations involve a great deal less detail and are usually prepared by the men in the field easier than under the Insecticide or Food and Drugs Act.

MR. WILLIAMS: Anyone else?

DR. SMITH: Our printed forms of reports require that all these transportation records should be attached to them, thus saving a letter or correspondence.

TOPIC V.
Hearings Before and After Institution of Prosecutions.

MR. WILLIAMS: The fifth question is a very important one. It relates to hearings before and after institution of prosecutions. I think the discussion of that should rather take this course: What is already being done or has been done by each bureau in the matter of granting hearings before and after institution of prosecutions, and what the opinions of the various representatives of the bureaus are as to the propriety or the value of these hearings. This applies to all the regulatory laws. It isn't intended to be confined to those hearings that are required by law under the Food and Drugs Act and the Insecticide Act.

MR. CAFFEY: For instance the Forest Service has hearings.

MR. WILLIAMS: I would like to hear from Mr. Squire.

MR. SQUIRE: It is our general practice, as I suppose it is of the other bureaus of the Department, before beginning any sort of legal proceedings against an offender, to give him an opportunity to set up his side of the case. Whenever possible, a member of our field force is sent to interview the party so that possibilities of misunderstanding may be eliminated as far as this can be done. I presume 75 per cent of our cases are settled through these informal hearings. We get together and talk the thing over. A great many of our timber and grazing trespasses we find little difficulty in adjusting in this way.

MR. MARLATT: I take it for granted that in any case you would hardly spring a trial on the man without warning him, without giving him a chance to explain?

MR. SQUIRE: No.

MR. MARLATT: I understand that in some of the bureaus hearings are required by law. The hearing must be had before you can legally proceed to a criminal prosecution. In our work, we are not required to conduct hearings as a condition of prosecution, but we don't spring a trial on a man without warning him and giving him a chance to make such explanation as he sees fit. This takes care of most of the smaller delinquencies.

MR. SQUIRE: Not all of our cases are civil cases. The violation of the Secretary's regulations is punishable by fine or imprisonment and in some instances where it appears that a party is especially willful in violating the regulations he is prosecuted criminally.

MR. CAFFEY: Mr. Raub, under the 28-hour law, you don't have any occasion to have hearings ordinarily unless you are taking it up comprehensively with some particular carrier, is that true?

MR. RAUB: That is the only kind of hearings we have under the 28-hour law.

MR. CAFFEY: Not as to specific cases. Where you are trying to get them completely to change their practices--

MR. RAUB: Unless we try to get them to make improvements along their line, that is the only kind of hearings we have in the 28-hour law.

MR. CAFFEY: The same would be true in meat inspection?

DR. SMITH: Yes.

MR. CAFFEY: Dr. Palmer, you have no occasion ordinarily for any hearings under the statutes you administer?

DR. PALMER: We have several classes of more or less informal hearings. Of course, our law doesn't provide any hearings. But I have in mind a case that came up in Baltimore a couple of years ago in which there was a general meeting among the commission merchants interested in the traffic in game in which the whole question of the game shipments to Baltimore markets was presented to the commission men interested in it and resulted in their taking concerted action, notifying their constituents, at the same time offering to cooperate with the Department and furnish all the evidence. Then we have the still more informal hearings after the prosecution is started in which some representative of the defendant calls on the bureau to see what can be done about the case, and if the thing isn't entirely out of our hands, we can sometimes advise him in those matters.

MR. MARLATT: The necessity for these informal conferences--we call them conferences rather than hearings--is very patent in the interest of good administration and in the interest of fairness. We frequently find prior to the issuance of a regulation, for example, or prior to undertaking prosecution, that it is advisable to have a conference of the interests involved because we may not know all the conditions, and we frequently get an idea of the business needs which puts an entirely different point of view on our proposed regulation or prosecution. That sort of conference is necessarily an administrative matter in the conduct of any regulatory law. But these conferences are not part of the requirements of the Act.

MR. CAFFEY: It has been litigated out as to whether, as a matter of fact, you could lawfully institute a prosecution under the Food and Drugs Act--the same would be true under the Insecticide Act--without hearing, and the Circuit Court of Appeals in one case decided that there must be the hearing. The Supreme Court, as I recall, finally decided the matter in the Morgan case, holding that the allegation in the indictment that a hearing had been held was not essential; that it was a so-called directory provision in the statute, rather than a mandatory one.

MR. HENDERSON: I don't think that the meeting quite catches the point, in regard to these hearings, that perplexes our office. The hearings we are referring to here are not those which are held as a matter of course for the preparation of the case, but those which come up frequently after the case has either been completed and ready for reference to us, or after it has been referred to the Solicitor's Office and before it reaches the Department of Justice, or after it has reached the Department of Justice. There are two cases that I have in mind. In the Forest Service out in Missouri at one time, we had a case reported against a claim that was pending in the Land Office for proceedings. The man came in there and saw the District Forester and explained that he had consumption; that because of his disease he was not able to comply with every requirement of the Homestead Law literally; that he did the best he could, how he did it and what he was doing. He expected to die within a few months. The District Forester investigated the facts and wrote to the Land Office that while there was not a complete compliance with the law, we thought the man was doing the best he could, and that if they were satisfied with the proof, we wouldn't contest the case. There was a case in the Forest Service where we held an informal hearing or conference after the case had been referred to the proper court--which there is the Land Office--for prosecution. Under the Food and Drugs Act, we frequently have cases where seizures are made where the claimant will come in and ask for an opportunity to show why we shouldn't have made the seizure, or why we should dismiss the case. Anyway he wants to tell us what he thinks about the case. The question then comes up whether the hearing should be held in the Solicitor's Office or in the bureau which reported the case or both; whether we should grant the hearing and how we should hold it.

MR. CAFFEY: The two problems I have most in my mind about hearings are these: As Mr. Henderson says, the matter of the holding of the hearings required by the statute is relatively simple.

Under the Food and Drugs Act and under the Insecticide Act, there are many illustrations where you have two conflicting commercial interests that are affected by the conclusion reached by the Department. You cannot always know in advance just what those interests are. The fact that there are those conflicting commercial interests, or that it is going to help one man and hurt another, constitutes no reason why you shouldn't go ahead and administer the law just as the law is laid down. Nevertheless, it is frequently difficult to know the extent to which you should go in hearing both sides, although they are not formal parties to the proceeding, before you make up your mind as to just what is the wise thing, and the thing required by the law, to be done. That is one of the kinds of hearings that I had in mind that create a great deal of difficulty. The other kind of hearing is the one that is applied either where there has been a seizure and no formal hearing has been required by the Act or in fact has been held, or where after the institution of a prosecution a man comes in and says he has got something that he failed to submit or wants to submit. That necessarily holds up the case after you have instituted your prosecution, and it is frequently very difficult to determine just what is the right thing to do about those hearings. Those are the two classes of hearings that I have in my mind about which it is most difficult to determine just what is the right thing to do.

DR. HAYWOOD: Mr. Caffey, I think we have all those kinds of hearings under the Insecticide Act. Taking up first the hearing where there are opposing interests, perhaps the cause of the hearing is something of this kind: The Insecticide Board has written in the Service and Regulatory Announcements that they are going to take a certain position. One side thinks that we should and the other that we should not take that position. Or, it may be that we have cited somebody, and, in consequence of that, the trade gets to think that we are going to take a certain line of action, and therefore they get all stirred up. Under those circumstances, if the trade wishes to and writes in to the Insecticide Board and asks for a hearing relative to this matter, we are always glad to give them a hearing, and say immediately that we will give them a hearing. We then have this hearing, and if it appears to us that we perhaps have been taking the wrong line, we may reverse our action as shown in Service and Regulatory Announcements. Almost invariably, however, we have studied both sides of this question thoroughly before we issue anything in Service and Regulatory Announcements. Hence the hearing is simply a statement of facts that we know already and no change is made. However, we make it a practice to write back to the opposing sides that may appear before this hearing, and say we are or we are not going to change our position in this matter, thus giving them a knowledge of what we are going to do. Oftentimes the manufacturer, after his original hearing as given to him by law, says everything that you think he could possibly say at the hearing. Then after the case is all ready to prosecute, everybody has recommended prosecution on it and it is just about ready to go to your office, then we have the man coming in and asking for another hearing. If possible, we try to steer a man off from the hearing. But if he insists, we will give him that hearing. I am not sure but what it would be always well for the Solicitor's Office to be represented at that hearing and still more so at the next style of hearing that I am going to speak about. There comes a case where the case has gone to the United States Attorney and is ready for prosecution. Then the manufacturer asks for a hearing. Well, it doesn't seem of much use to give him a hearing. We have fully made up our minds in regard to the matter, and yet there is very strong pressure brought to bear to give him a hearing. We don't want him to feel that he isn't receiving full consideration at the hands of the Department. I don't think the Department can afford to take that attitude, and therefore even under those circumstances we will give the manufacturer a hearing. From that hearing, we decide whether we think the prosecution ought to be continued, and practically we always do decide that we ought to go right ahead with the case. Under those circumstances we transmit a copy of that hearing to the Solicitor's Office with our recommendation in regard to what action we think should be taken

and let the Solicitor's Office take the matter up with the United States Attorney as to whether the case should be dropped. Just how much of this hearing he wants to send to the United States Attorney is for the Solicitor to decide. We give him a full account of it. I believe in such a hearing as that just mentioned the Solicitor's Office should always be present at the hearing. That hasn't always been so in the past.

MR. HENDERSON: Dr. Alsberg isn't here today. He told me about his views on this yesterday. It has been the practice of the bureau for the last year or so rather to prefer not to hold hearings after the case has once been referred to the Department of Justice, and yet on several occasions where they have held hearings, they have abated the case, showing that even with all the care that they are exercising constantly not to send over any cases without knowing all the facts, sometimes some facts do escape them. Yesterday Dr. Alsberg said that the best way would be to give the man a hearing, but to have the hearing in the Solicitor's Office, and for us to telephone over to the bureau and ask them to send over representatives to attend the hearing who would be able to talk the matter over in our office, or at least to draw out the right kind of facts which we unaided couldn't do.

MR. CAFFEY: On the subject that you just referred to, about having your mind made up after you have heard everything; that is true, but I can give you an illustration of two cases, one of which has occurred since I have been in the Department and one in my experience in private practice. I have talked about this matter a good deal in my office.

The first of these was not a case of prosecution, but there were conflicting interests in the matter. We thought we had reached the right conclusion and had taken tentative action. It was immediately questioned by the various parties in interest. We had difficulty in getting the different interests to face each other. Finally they did come here and were at each other's throats. Each side questioned the good faith of the other. The Department, through its representatives, stated the government point of view and what its attitude was. They went away, asked time to put in some additional facts and then again, in the course of two or three weeks, applied for another hearing. The same parties came down and since then we have had difficulty in keeping them from kissing. All agreed in the good faith of each other. When the Department did make a decision, it was an added satisfaction to make one which satisfied everybody.

The other case illustrates this, that a man always feels better when you have given him a hearing, even if you decide against him. This particular case did not concern this Department. We learned that one of the Departments had required the United States Attorney to institute prosecution against us by the issuance of a subpoena duces tecum to produce certain records. I went immediately to see the United States Attorney and to ask him if we could lay all the facts before him, with a view to hearing our side of it, as well as the government view point. He said he could not do anything without getting instructions from the Department at Washington. I came down here, saw the representative of the Department in charge of the matter and he told me that it was not the practice to give hearings. We felt very sore about it, or my client did, and we prepared the case very thoroughly. It cost us $20,000, but we got the government case dismissed on its own evidence on a law question. These people will never get over the soreness that they felt about it. As they looked at it, a great injustice had been done them. They questioned the good faith of the Department in prosecuting the case against them. It was a very complicated matter and had two sides to it.

We have a number of people who come down here after prosecutions have been sent to the United States Attorney. They get the notion that they can use influence on officials. I have seen little or no evidence, since I have been here or before I came here, that there was any real truth in that supposition and yet we all realize that it does pervade the minds of a good many people who

are unaccustomed to have dealings with government officials. Again, sometimes, they come down here with the view of getting delay. They are not bona fide applications. On the other hand, in cases where there has not been a hearing, and it is something new, they feel very sore if we do not give them a hearing. That is one of the difficult questions we have to decide.

DR. HAYWOOD: I think there is but little doubt that when a manufacturer insists upon it, that even if it has gone to prosecution we must give him another hearing. It relieves that feeling that he has been persecuted or has been prosecuted without laying his full case before the Department. It sifts down to this: whether it is better, after the case goes to prosecution, to have this hearing held in the bureau or in your office. I would say personally I would be glad to see your office instead of the Board holding them, but there are certain things that we would have to meet by such a procedure that would be rather difficult to meet and it would be rather simpler to have the Board hold them and have the Solicitor's Office represented than the other way, for the reason that we oftentimes have cases that involve all four members of the Board and, therefore, it is easier to have the Board hold this meeting with the one representative of the Solicitor present, than to have four men go to the Solicitor's Office.

MR. CAFFEY: We will always be glad to arrange that.

DR. HAYWOOD: Either way will suit us but I do think it will be simpler for the Board to conduct these hearings.

MR. CAFFEY: We will be glad to consider the convenience of the particular case and, as your judgment suggests, the best way to handle each particular case.

DR. HAYWOOD: I do believe that both the Solicitor's Office and the Board should be at the hearing.

MR. CAFFEY: We will always be glad to do so.

MR. MARLATT: Is it not true that the Department after all is merely a public servant and these people even after trial have the right to appear before the Department and defend their case, and that enters into it, and these men must have the right to present their cases either by correspondence or at hearing. This is a right which they possess as long as we are public servants.

MR. CAFFEY: I think you put it very well. As Mr. Henderson has said, we may find in these hearings that we have made a mistake and we are only too glad to correct our mistakes.

MR. HENDERSON: That does not happen often.

MR. CAFFEY: Do you wish to add anything, Mr. Campbell?

MR. CAMPBELL: No.

MR. GATES: I want to say a word in reference to the effect of these hearings on the prosecuting attorney, which I think further justifies them. Many times the application comes through the United States Attorney from the defendants for a hearing, and when he realizes that such defendants have had another hearing and although he may have been lukewarm in his attitude or may have been indifferent to the attitude against the Department, it has been almost invariably my experience under the Insecticide Act that he gets a new light and his attitude is changed and the reply then comes back after we have submitted the results of the hearing, "This case will be prosecuted vigorously in accordance with the Department's recommendations."

MR. CAFFEY: If there is no one else I suggest we adjourn and take up the sixth subject tomorrow. I wish to say it would be the greatest pleasure to the Solicitor's Office if we could secure suggestions from the different bureaus on this sixth subject.

Session of March 2, 1916.

TOPIC VI.

Method of Cooperation between the Bureaus and the Solicitor's Office.

MR. CAFFEY: The thing we are chiefly concerned with is this matter of reduction of time between the commission of the offenses and the transmission of the cases to the Department of Justice. I think it would be very helpful if each bureau would make a definite suggestion of its own idea on this sixth topic, as to methods of cooperation between the bureaus and the Solicitor's Office. Now the point of view I have about that is that what the bureaus are concerned with, and what we are concerned with in our office, is just a matter of team work. It has to be team work. Dr. Palmer, would you discuss that phase?

DR. PALMER: Mr. Chairman, I do not know that I have very much to say, because it seems to me that the cooperation between the Biological Survey and the Solicitor's Office is in very good shape, largely because three former members of the Biological Survey are now in the Solicitor's Office.

MR. CAFFEY: Perhaps you might discuss, for the information of the other bureaus, some of the methods.

DR. PALMER: These members thoroughly understand our needs, understand our laws, and we are working in complete harmony except possibly there may be individual differences of opinion occasionally as to the handling of some particular case. A case comes to the Biological Survey involving an interstate shipment of game, which is the most generalized case we have, and we prepare a skeleton outline of facts and submit it to the Solicitor. Very frequently a request comes back for additional information. Sometimes we can obtain it and sometimes we can not; sometimes we think it is necessary and sometimes we do not; but here is a point upon which we might bring about a little closer cooperation. Formerly we proceeded by indictment and it seemed very difficult to induce the United States Attorneys to take up these cases except by indictment, which is usually a slow and tedious process. Now we proceed by information. It might be possible for the Solicitor's Office to make up a skeleton form of information, which our men, possibly the inspectors in the field, could fill in. This could be revised by the Bureau and then go to the Solicitor's Office practically in the form in which it is necessary to be filed. Reports now come in in one form, a statement of the case is made in the Bureau, and then passes on to the Solicitor's Office. The field officers are all familiar with the kind of evidence required and it occurred to me that if a form of information could be prepared, with a few minor changes, it could be filled out by the field officers or Bureau and go right through, thus saving an immense lot of time and considerable rewriting and correspondence.

MR. CAFFEY: Your idea is, Doctor, to extend the scheme we have already but not so far. Formerly we sent it over to the Department of Justice with an elaborate letter of explanation. Now we send over the information already drawn. It is no more trouble to prepare the information than to write a letter. Your plan was to extend that further; you to report it to the Solicitor's Office in the shape of an information.

DR. PALMER: Yes. When our men collect the necessary data, let them fill in this blank form of information drawn up to meet the kind of cases we have. It would save considerable time. Occasionally an affidavit is required from the consignee as to the receipt of game, which, of course, makes the evidence complete, but this affidavit is often exceedingly difficult to obtain. I do not know whether you appreciate the circumstances under which some of our evidence must be obtained, or the time spent in securing these affidavits, which the United States Attorneys do not always think are necessary. If the Attorney has his witnesses, oftentimes he does not care about affidavits; he only wants to be sure of what his witnesses can testify to.

MR. CAFFEY: Let me explain why we have to have these affidavits at times. There are many jurisdictions in which the United States Attorneys insist on having complete affidavits, with all data, in their hands before the information is filed. There are other jurisdictions in which they are not so exacting. Furthermore, if we are going to ask for a warrant of arrest on the information, the information when filed must be accompanied by affidavits of persons having knowledge of the material facts; otherwise, the warrant of arrest will not issue. In the cases in which, as it frequently happens, we do not ask for a warrant of arrest, but merely notify the defendant and he comes into court, why the United States Attorney makes no use of the affidavits. Under the decision in the so-called Weeks case in the Circuit Court of Appeals in New York, it has been definitely laid down that the signature of the United States Attorney in his official capacity to the information is adequate to warrant the court accepting the information and allowing it to be filed, although not accompanied by affidavits; but they held further that if the warrant of arrest is to be asked for, then the defendant is entitled, as a matter of constitutional right, to have reasonable cause for the issuance of the warrant shown before the warrant issues. We can not always anticipate whether we are going to have to have a warrant or not, but this is by way of explaining the reason.

DR. PALMER: My point was this. We furnish an affidavit from the carrier which shows at least the initial act of interstate commerce. Sometimes, but not always, we are able to furnish affidavits from witnesses as to the delivery to the common carrier. The difficulty is in securing the affidavit from the consignee. The arrest is not made on the affidavit from the consignee but on the affidavit of the shipper or witnesses to the act of shipping. The other affidavit makes a complete case but it is difficult to obtain and a cause of delay. My suggestion was that the consignee's affidavit be waived, and in case the United States Attorney is unwilling to obtain a warrant for arrest, have a conference between the field man and the United States Attorney and see just what is needed. In this way we could furnish everything that is required in much less time.

MR. CAFFEY: Yes. In cases where it sometimes happens that there must be warrants of arrest and we are unable to procure affidavits, we proceed by indictment, where affidavits are not necessary.

DR. PALMER: I am not asking to do away with all affidavits. It is only when they are difficult to obtain and not absolutely necessary.

MR. CAFFEY: I might say in that connection that I am glad that you brought this point up because it may be that we can arrange with the Department of Justice to eliminate some of these things. We have succeeded in reducing the number of affidavits by one in the Insecticide and Food and Drugs cases.

MR. WILLIAMS: Let me say this about the affidavit of the consignee. The carrier makes an affidavit that a certain package was delivered on a certain day, but as to what was in that package he is as ignorant as the man in the moon and therefore the affidavit does not show any violation of the Lacey Act, so that until you have the affidavit of the consignee of the package that he opened it and found birds, you really have no prima facie case.

DR. PALMER: You are speaking of prima facie cases that we get through the books of the consignees, but in ordinary cases we usually furnish an affidavit of the officer who examined the package as to the contents, and the affidavits of the carrier always show the billing and frequently the marking.

MR. WILLIAMS: The billing may be "fish" or "poultry" and from that you get no information that game is in there.

DR. PALMER: But the affidavit submitted by the game warden may have that.

MR. CAFFEY: So long as you have sufficient information to show a prima facie case, it does not make any difference whom you get the information from.

DR. PALMER: For years we have made it a rule to proceed with a practical case although we may not have a perfect case and to leave something to the United States Attorney. Speaking further of affidavits, we have been asked to furnish these in quintuplicate, five copies, and it is quite a little hardship on our men in the field to get papers in such numbers. I wonder if we can cut the number down to four or three; formerly we furnished three, now five are required.

MR. WILLIAMS: I will answer that by saying that the Department of Justice has specially requested that we get that number of copies and in order to meet that we have asked the Doctor to supply five.

DR. PALMER: Well, where do the five go?

MR. WILLIAMS: They have one in the files of the Department of Justice which they retain there. The original, of course, goes to the United States Attorney. I think they want an extra copy for files of the United States Attorney and my recollection is that they wanted the other copy for some other files in the Department of Justice. I have forgotten what that file is, but at any rate that came about through a special request from the Department.

MR. CAFFEY: Possibly we can get them to withdraw that request.

DR. PALMER: Or if we get up this form?

MR. RAUB: Is it not necessary merely to execute the original?

MR. WILLIAMS: Yes. The others are only copies.

MR. GODING: And they are naturally made at the one operation on the typewriter. We can as easily write five as one.

DR. PALMER: Yes. We can, here, but in the field, with the little typewriters our men have, it is a big job and a very serious deterrent in the field work. In the office it is another question. Now, I want to speak a moment on the matter of proceeding by indictment versus information. In our work I think perhaps the pendulum has swung too far in the matter of proceeding by information because, while we get prompt action, we do not always get the effective results that we do by indictment. I think it would be well to have a recommendation made by the Bureaus in any case in which it is considered advisable to proceed by indictment rather than by information and to follow that recommendation unless there is some good reason for not doing so. We have several objects in view besides merely securing conviction in a case, and to get a fine usually of $25 or $50 in a certain class of game cases amounts merely to a tax on the business and does not prevent a repetition of the offense.

MR. CAFFEY: Of course, one of the purposes of proceeding by information, rather than by indictment, is economy as well as expedition. If you proceed by indictment you have witnesses to appear in person before the Grand Jury, in order to get the case started in the Federal Court. These same witnesses would have to go back for the trial, if the case be tried. Nevertheless, it is quite proper, and quite practical, for the Bureau, if it prefers indictment, to include in its recommendation a request for that.

DR. PALMER: We use a prosecution for several purposes. If we present a case to the United States Attorney just before the opening of the game season and proceed by information, the case is brought to trial promptly. The defendant is convicted, pays his fine and goes right on about his business, because the game season is on and his profits are large. It pays him to do so. If, on the other hand, the offender is indicted just before the game season opens, he very rarely attempts further shipments and the indictment acts as a deterrent of future violations that year and he does not

get off with a quick trial and a small fine. We have another class of cases in which we have no hope of securing a conviction but we wish to prevent a repetition of the offense. I refer to cases in which the defendant has departed to another section of the country. We have a few cases in which the shippers migrated as soon as action was taken against them. Some have gone to the Pacific Coast. We know as a practical proposition that we can never secure conviction for the reason that the United States Attorney who has authority to decide the advisability of prosecution, will advise that the expenses of bringing back the defendant are too great in proportion to the results obtained by conviction, but in all such cases we secure indictments and hold them against the offenders. We have had a number of such cases standing for years, knowing that we never could secure conviction, but we have never heard of a repetition of the offense. There is another class of cases in which the indictment is very effective and that is when the defendant has no desire to fight the case but is used as a tool for others who are opposed to the game laws. Proceeding by information in cases of that kind would be futile. We had such a case in Florida some years ago, involving shooting birds on a national reservation. The defendant killed a bird on the bird reservation and was perfectly willing to enter a plea of guilty and to pay a fine, but a number of wealthy sportsmen who were opposed to reservations and Federal protection of birds came together, made up a fund, and secured the best counsel in the State in behalf of the defendant. If that case had come to trial we would undoubtedly have lost it. We continued the case one term of court, then a second term, and then nothing could prevent the defendant from pleading guilty. The indictment hanging over him was something he did not relish and notwithstanding the advice of his counsel and the support of his backers, he insisted on entering a plea of guilty. For these reasons I wish to emphasize the recommendation of not always proceeding as quickly as possible in these classes of cases.

MR. WILLIAMS: Why do you say we would have lost that case? Was that the DuPont case?

DR. PALMER: I forget the title. With the counsel he had I do not think that there was a possibility of winning over a jury.

MR. CAFFEY: You think he was guilty?

DR. PALMER: Yes, but it was a question of the jury and public sentiment.

MR. WILLIAMS: You have not in mind any legal question?

DR. PALMER: No legal question at all. Usually the United States Attorney is at a disadvantage in important cases where the defendants employ the best counsel in the State. We have had some such cases. That was the condition in the Smith case, the first case under the Lacey Act; and in the Thompson case, a very unequally matched case; but continuances will often throw the advantage on our side.

DR. SMITH: In connection with the meat inspection work, we at present have a cooperative arrangement with the Bureau of Chemistry and of course we use your office as far as possible to get all the information we desire. I don't know that I have anything in particular to suggest or say about this question.

DR. HAYWOOD: Mr. Caffey, the collaboration between your office and the Insecticide Board is in such a satisfactory condition that I have no suggestions to make relative to any changes. One of the principal points in which we have most excellent collaboration is after the informations are prepared in your office they are sent to our office to see if all of the points that we have brought up are fully and thoroughly covered, that is, by carbon copy. The information doesn't go out until we have had our chance to correct the information, if necessary, or signify our desire to concur in it, and therefore by that all the informations that go to the courts go to them in a condition that is perfectly satisfactory to our Board and to your office. We are in general using the Solicitor's

Office - and hope that they are using us , and believe that they are - in a very informal way. If we don't understand anything about the legal points in a case, we feel free to go to your office and get the information, and also when we send up cases, we believe your office feels free to come and discuss them with us in an informal way because Mr. Gates does come and discuss them with us in that way. So that with the method of collaboration that we have at the present time, I have no suggestions to make relative to any changes whatsoever.

MR. SQUIRE: Mr. Caffey, as I stated the other day, the cooperation between the Forest Service and the Solicitor's Office is very close. At each of our District headquarters there is stationed one of your assistants. He is in no sense an officer of the Forest Service but belongs to your office just the same as the men here in Washington. At the same time his office is in the same building with our District Officers and he is available for informal conferences. The result of these informal conferences is that we are greatly aided in preparing our cases and thereafter expediting action on them. It has occurred to me, while this discussion has been going on, that possibly other bureaus of the Department who have field assistants might profitably avail themselves of the services of your assistants at our District headquarters. Possibly they do that already to some extent.

MR. SQUIRE: I can appreciate that an Inspector in the field may bump up against questions which seem to him to be very difficult but which could easily be solved with the assistance of a lawyer. I have no doubt that informal conferences with the Assistants to the Solicitor in the field, as well as in Washington, would often be very profitable to administrative officers.

MR. CAFFEY: They are always available for that purpose.

MR. RAUB: Mr. Caffey, I have no suggestions whatever to offer to improve the cooperation between the field inspectors and your office. I have found on many visits when I have come over there and had to bother you, I had the heartiest kind of cooperation that you could possibly give. I was in fact made at home so that I didn't feel that I shoudln't come over there and discuss questions where my ideas might have been entirely different than your office's, and we thrashed them out, and at no time was there a feeling except that "If you don't feel the way I do, tell me." I might add, though, in reference to the affidavits which were mentioned that we have started the making of these affidavits in our office instead of having them going across to your office and then come back. The idea was to expedite matters. I believe that the minds of the laymen in the field are not trained along the channels to prepare a legal affidavit, and therefore when a case comes in requiring an affidavit, it is prepared and sent back to the man or whoever is involved with the request to have it executed.

MR. HUNTER: As I understand it, this question deals largely with the preparation of cases. Very fortunately, we have had practically no cases. We have found the attitude of the men in your office sympathetic and liberal. It has been a very great help to us.

MR. STENGEL: Dr. Alsberg and Mr. Campbell are neither able to be here this morning and asked me to attend the conference. Speaking for the Bureau of Chemistry, I can only echo the statements made by the gentlemen that preceded me, that the cooperation between our office and yours is very close and cordial. In connection with the cases developed from the police regulations - the only ones that I am familiar with, and I understand these cases are included in this discussion - I think that perhaps in former times our cases were not prepared as carefully as they might have been, and that necessitated more frequent reference to the Bureau for further information. I believe that that trouble has been eliminated largely. There are none of the delays that occurred before. It will be of great help to us if this arrangement is carried through by which it will not be necessary to secure a dealer's affidavit where it is impracticable or difficult to secure it.

MR. CAFFEY: That is pretty nearly in full operation now, isn't it, Mr. Henderson?

MR. HENDERSON: Yes.

MR. STENGEL: We used to be bothered considerably in the past by a disposition on the part of District Attorneys not to notify the witnesses that they were needed until a very brief time before the trial. In such instances where the witnesses were at some remote point from the place of the trial, it resulted in a great deal of inconvenience. I think that undoubtedly your office could do something to stimulate the District Attorneys in giving us greater advance notice. I don't know of anything else that I might say.

MR. CAFFEY: Mr. Henderson, how many jurisdictions are there in which they refuse to proceed by information and insist on indictments?

MR. HENDERSON: Only one, I think, Indiana.

MR. CAFFEY: Of course, there we have to use indictments.

MR. HENDERSON: We had a letter from a United States Attorney the other day. We wrote him asking him to file an information, and he wrote back that he would be glad to bring the matter to the attention of the grand jury. We wrote back and told him that we were proceeding by information in most districts for filing, and hoped that he would be able to do as almost all of the United States Attorneys do. He had apparently thought that it was necessary to present an indictment to the grand jury.

MR. CAFFEY: The proceeding by information in a good many of the jurisdictions is new to them. This Weeks case was only decided about a year or a year and a half ago.

MR. HENDERSON: We have discussed many things with the Bureau of Chemistry in the way of cooperation, and as Mr. Stengel says, we have put into practice from time to time little things which have resulted in cutting out useless operations, perhaps, and the saving of time. For instance, the Bureau has furnished more informations in our Sherley cases than they did formerly. That saves a conference sometimes with the Doctor. The affidavit now executed by the inspector covers what the dealer formerly said, and cuts out a lot of time for the Bureau. I think the Bureau is contemplating, as soon as the inspectors get accustomed to the form of that affidavit, asking us whether we don't think they might try it out and have them execute them in the field in the first place so as to save a little time along that way. I certainly think we haven't anything in the Bureau's methods to criticise. They are trying every day to devise some means to shorten the time between the collection of samples and the prosecution, and I have no doubt that they are going to succeed in greatly shortening that time. In fact, the only reason why that average that was put on that sheet that was sent around to the different Bureaus was as large as it was is due to the fact that they were old cases and new cases mingled together. We send along frequently cases now that are considerably less than a year old, but among the ones that are going along are those which are considerably over two years, and that pulls down the average. We just got a letter from the United States Attorney yesterday from New York complimenting us on the fact that we have sent up a case within seven or eight months, and hoping that we would be able to continue the good work.

MR. CAFFEY: In that connection, Mr. Henderson, where there are unusual delays that are perfectly explainable, would it be your suggestion to the Bureaus that, in transmitting the cases which were of that character - that is, where there had been considerable lapse of time - the report show some reasons for the delay, in order that we might transmit it to the United States Attorney and put him in a position where he could answer any criticism that might arise in the court?

[illegible] : [illegible] ply [illegible] ...ion, ...

[illegible] : Yes.

[illegible] : Mr. Dean: We would [illegible] ...ject to notify [illegible] ...tion on the part of Attorney [illegible] to notify [illegible] ...ney that [illegible] ...der until a very brief time before [illegible] ...trial. In such instance [illegible] ...the witness why at some re- [illegible] ...moval from the place of the trial, it resulted in a great deal [illegible] ...inconvenience. I think that undoubtedly your office could do [illegible] ...something to stimulate the U. S. Attorneys in giving us greater [illegible] ...notice. I don't know of anything else that I might say.

MR. LAFFEY: Mr. Henderson, how many jurisdictions are there in which [illegible] ...they refuse to proceed by information and insist on in- [illegible] ...dictment?

MR. HENDERSON: Only one, I think, Indiana.

MR. LAFFEY: Of course, there we have to use indictments.

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MR. LAFFEY: In that connection, Mr. Henderson, there is a [illegible] ...unusual delays that are perfectly explainable, would it be [illegible] ...[illegible] ...to the Bureau that, in transmitting the cases [illegible] ...[illegible] ...that characteristic - that is, where they've been [illegible] ...[illegible] ...Dunn of time - the report show the reasons for the [illegible] ...delay, in order that we might transmit it to the [illegible] ...[illegible] ...out him in a position where he could [illegible] ...[illegible] ...that might arise in the courts?

MR. HENDERSON: I think that that might be an excellent idea where the delay was really explainable from the standpoint of the court and the United States Attorney. There never have been any delays which are not explainable to ourselves or where we could have blamed any individual, but we do know that when Dr. Alsberg came in charge of the Bureau he had different ideas to formulate into plans, and there were of necessity delays occasioned there which needn't happen as a matter of routine, as he said himself the other day when he was here in the meeting. But those delays such as Dr. Haywood mentioned yesterday, they might be very well presented to the United States Attorney.

MR. CAFFEY: And avoid any adverse impression on the minds of the court and jury from the delay having occurred?

MR. HENDERSON: Yes. There is nothing to be said in favor of the defendant if the case is delayed at his request. It is only a point in his favor when we have unnecessarily delayed the case ourselves.

MR. GODING: In that connection, I remember a couple of 28-hour cases which were pretty old when they got to the Solicitor's Office, I think between two and three years old, and we sent them along to the United States Attorney of southern Ohio, and they came back with a letter from him showing a disposition not to prosecute them because they were so old. These two particular cases happened to be among a lot of others on which Mr. Raub was working, and he was turning the cases out by the thousand and he couldn't very well get to those two, and that was the principal cause for the delay. When that was explained to the United States Attorney, he went ahead and filed the cases and got judgments in those two cases. So I think it is a good idea sometimes to explain when the cases go along the reasons for delay.

MR. CAFFEY: Has anyone else anything to say on this point?

The one point that I would like to make again, is that, from the standpoint of the Solicitor's Office, we feel that we get much better results by informal conference than by formal exchanges of memoranda. We therefore prefer getting together. We understand each other so much more fully and adequately than is possible by written communications. We always welcome informal conferences.

We will proceed to the seventh, "Methods of handling cases in the Solicitor's Office." Of course, this point has been in part covered by the other discussions. I think, Mr. Boyle, we will call on you first; perhaps you will give us something in the way of discussion as to how you are handling your cases. They may not all be acquainted with your methods.

TOPIC VII.
Methods of Handling Cases in the Solicitor's Office.

MR. BOYLE: Under the Bureau of Animal Industry laws, it is necessary, in order to make out an offense, to establish an interstate shipment of the prohibited article or the offering of the prohibited article for interstate shipment. In cases submitted, the reports containing the evidence are examined to ascertain, first, whether an interstate shipment or the offering for an interstate shipment can be made out, secondly, whether the other elements of the offense are established by the evidence. The evidence is briefed and transmitted to the Department of Justice for the use and information of the United States Attorney, so that he may be able to see at a glance that the elements of the offense are established, and what he can prove by each witness towards establishing a violation. The United States Attorneys are advised that they may call upon the Bureau representatives in their jurisdictions to give them any assistance they deem necessary in the way of procuring additional evidence. The Bureau inspectors are frequently in conference with the United States Attorneys and make suggestions to them and also aid them in getting witnesses before the Grand Jury or at the trial.

MR. CAFFEY: Of course, in the B. A. I. to a greater extent than in the other bureaus, the people who collect evidence are located in the immediate neighborhood of the United States Attorney who has charge of the case. To some extent this is true of all bureaus, but perhaps to a greater extent in the B.A.I. than others. Is that not true?

MR. BOYLE: Yes, that is true.

Cases arising under the quarantine laws are prosecuted by information. Under the Meat Inspection Act, the prosecution is based on indictment. Informations are prepared in the Solicitor's Office. As a general rule the reports made by the bureau are accompanied by the necessary evidence to make a complete case. Occasionally it is necessary to take up with the bureau the matter of procuring additional evidence or to get additional information in regard to some phases of violations. Prosecutions under the Virus Act are based on information. These violations are handled in the same way that violations under the quarantine laws are handled. There have only been a few prosecutions under the virus law, about seven or eight cases. It is a new law, which accounts for the small number of prosecutions.

MR. CAFFEY: Mr. Gates?

MR. GATES: The thought occurs to me in regard to this subject and the preceding one, Mr. Solicitor, that perhaps no two other headings in the list are of greater importance to the legal branch of the Department, the section of the office for the enforcement of the Insecticide Act in particular and the rest of the office in general. I want to say, by the way, that this office heartily reciprocates the bouquets that have been tossed and returns them in kind, and verifies the cordiality that exists between this office and the other branches of the Department. In reference to the Insecticide work in our office, I can not say as much in our own favor as I can in behalf of the Board. There has been more or less delay in the last few months, largely caused by accumulation of work, but we hope to overcome that in the near future and catch up again. In regard to collecting evidence under the Insecticide Act, we follow the same procedure as under the Food and Drugs Act, which eliminates a great percentage of the delay - and I might say right there that the delay, and I think we held the record according to the list that was handed around, may be accounted for by the fact that so many of these informations combined two or more cases. The older cases in such instances are previous violations which have been held in temporary abeyance pending observation of the conduct of the manufacturers, and when a second or third or fourth offense was disclosed, the old case or cases which had not expired were taken from the abeyance file and, combined with the later case or cases in a single information, were referred to the Department of Justice for prosecution.

MR. CAFFEY: For the purpose of showing that these men had continued to violate the law?

MR. GATES: And in such cases we reversed the order, making the newer one first, in order to show that the others were there merely to show the offender's course of conduct. Coming down to the second topic, the one we are interested in particularly, the methods we follow under the Insecticide Act are exactly parallel to those under the Food and Drugs Act, which have been sufficiently explained already. We are striving to take in all the incidental slack and tighten up lost motion, and perhaps this conference will lead to more improvement in this respect in the future. I might mention our effort to eliminate unnecessary red tape and unnecessary memoranda. It seems essential that there should be record of some transactions, but not all. The telephone is always at our elbow and we accomplish more and better by personal conference and telephone than by written memoranda. The stenographer has to be called in. The matter has to be dictated and signed and at best does not go out until the next day after it is first taken up. I do not know of anything, coming down to practical matters, that I have to suggest to improve the methods of business in our office, at least in the scheme adopted.

MR. CAFFEY: Mr. Williams?

MR. WILLIAMS: I will speak, Mr. Caffey, with reference more particularly to the game cases, since at the present time I am more concerned with the preparation of game cases than anything else. In fact, I really have nothing to do with the other penal statutes in the matter of preparation for prosecution, but when the Biological Survey transmits to us a report of a violation together with the written evidence that they have and the statement of facts that they can show, I go through the papers and discover whether or not, as a matter of law, the facts shown are covered by the Statute. Then we see if the information we have, the facts, and the evidence of witnesses, will sustain that prosecution. If we find that it will, we prepare the information and report to the Department of Justice. Now, wherever I find that there probably is not, in my view of the matter, a violation, I take the matter up with the Biological Survey informally, in order that they may give me the benefit of whatever knowledge they may have in reference to the case, and I frequently find that they give me a good deal of assistance in that matter and sometimes my views have been changed after an informal conference with them. While that is about the substance of the manner in which we handle cases, I don't believe there is anything else to do except this. I think we are cooperating very effectively with the Biological Survey at the present time on the matter of their criminal prosecutions. There is one matter that I should have said something about in the preceding question. Of course, we are dealing here largely with the regulatory laws and preparation of cases for prosecution, but there are various other functions that the Solicitor's Office performs. These are very important functions which may not be thoroughly understood by all the Bureaus. They frequently are called upon to answer some correspondence that does not relate to a matter of a violation, but someone wants information about some of the regulatory laws or information about some general subject that has to do with one or more statutes. Well, now, the letter is referred by the Secretary's Office to the Bureau for preparation of a reply. The Bureau frequently prepares a reply and when the reply comes to the Secretary's Office it is discovered by the Secretary's Office that there is some question of a statute involved there and in order to be quite sure that the Bureau has the correct view of the statute or has written the correct answer, the memorandum or letter is informally referred over to our office and we go through it. Well, now, when memoranda or letters of that kind come to us and are referred to me - some of them - I promptly take the matter up with the Bureau, find out just what their point of view was in handling that, and if I find that through some inadvertence they have omitted consideration of some statute that bears upon the question, why we go over it again and if the letter needs correction, we get up another letter and send it back to the Secretary's Office. The point that I want to make is this, that our business is so complicated and we have so many statutes that affect the business of the Department that we frequently may render aid to the Bureaus whenever they prepare a letter for the Secretary's signature if they will feel free to call upon us, and when they prepare such a reply it can be sent out without having to write the letter over. To some extent the Bureaus are doing that. They are conferring with us informally before they prepare a reply for the Secretary's signature and I would like to make a point of this, that the Bureaus should feel at liberty at all times to ask for any suggestion that we may have to make before they prepare some of these replies, particularly those that involve a statute which they may not be altogether familiar with or may not be familiar with the decisions of the courts under these statutes. If they will call upon us we will be of considerably more assistance.

MR. CAFFEY: I would like to hear from the Bureaus. Of course, this subject has been more or less discussed heretofore, but if there are any further suggestions we will welcome them.

Suppose we now pass on to the 8th subject, "Suggestions for elimination of duplication of work and for more economical methods." This also has been previously discussed in some ways, but perhaps there will be other suggestions.

MR. CHAIRMAN: Mr. Mitchell.

MR. MITCHELL: I will speak, Mr. Curley, with reference to a particularly to the Penn cases, since we the present time I am more concerned with the preparation or name cases than anything else. In fact, I really have nothing to do with the other penal statutes in the matter of preparation for prosecution, but when the Solicitor General writes to us a report of a violation together with the written evidence that they have and the statement that they can make, I go through the papers and discover whether or not, as a matter of law, the facts shown are covered by the statute. Then we see if the information we have, the facts, and the evidence of witnesses, will sustain that prosecution. If we find that it will, we prepare the information and report to the Department of Justice. If, wherever I find that there probably is not, in my view of the matter, a violation, I take the matter up with the Solicitor informally, in order that they may give me the benefit of whatever knowledge they may have in reference to the case, and I frequently find that they give me a good deal of assistance in that matter and sometimes my views have been changed after an informal conference with them. While that is about the extent of the duties in the handle cases, I don't believe there is anything else to do except this. I think we are cooperating very effectively with the Solicitor's Office at the present time on the matter of their criminal prosecutions. There is one matter that I should have said something about in the preceding question. Of course, we are dealing here largely with the regulatory laws and preparation of cases for prosecution, but there are various other functions that the Solicitor's Office performs. These are very important functions which may not be characterized by all the Bureaus. They frequently are called upon to answer some correspondence that does not relate to a matter of a violation but someone wants information about some of the regulatory laws or information about some general subject that has to do with one or more statutes. Well now, the letter is referred by the Secretary's Office to the Bureau for preparation of a reply. The Bureau frequently prepares a reply and when the reply comes to the Secretary's Office it is discovered by the Secretary's Office that there is some question of a statute involved there and in order to be quite sure that the Bureau has the correct view of the statute or has written the correct answer, the memorandum or letter is informally referred over to our office and we go through it. Well, when memoranda or letters of that kind come to us and are referred to me - some of them - I promptly take the matter up with the Bureau, find out just what their point of view was in handling that, and if I find that through some inadvertence they have omitted consideration of some statute that bears upon the question, why we call their attention to it and if the letter needs correction, we get up another letter and send it back to the Secretary's Office. The point that I want to make in this, that our business is so complicated and we have so many statutes that affect the business of the Department that we frequently may render aid to the Bureau whenever they prepare a letter for the Secretary's signature if they will feel free to call upon us to write the letter over. To some extent the Bureaus are doing that. They are conferring with us informally before they prepare a reply for the Secretary's signature and I would like to make a point of this, that the Bureaus should feel at liberty at all times to ask for any suggestion that we may have to make before they put out leaving to write the letter over. To some extent the Bureaus are upon us, and when they prepare such a reply it can be sent out with- letter for the Secretary's signature if they feel free to call frequently may render aid to the Bureau whenever they prepare a reply, that is the only suggestion we will welcome then.

MR. DAVIES: I would like to hear from the Bureau. Of course, this subject has been more or less discussed heretofore, but if there are some of those suggestions that we may have to make before they pertain to any suggestion that we may have to make before they prepare a statute, particularly those that involve a question of law or which may not be familiar with the decisions of the courts under those statutes. If they will call upon us we will be of considerably more assistance.

Chapman we now pass on to the 8th subject, "Suggestions for elimination of duplication of work and for more economical methods." Time also has been previously discussed in some ways, but perhaps there will be other suggestions.

TOPIC VIII.
Suggestions for Elimination of Duplication of Work and for More Economical Methods.

TOPIC IX.
Specific Suggestions of Various Means for Reducing Time between the Commission of Offenses and Transmission of Cases to the Department of Justice.

DR. HAYWOOD: I did not want to be called on first but that is the way I have arranged it - by combining these together. I could not discuss them in any other way. Now, I wish in my discussion of this, Mr. Solicitor, for it to be fully understood for the Insecticide Board (I am discussing it for the Insecticide Board) that there is no criticism being made of the Solicitor's Office or any branch of the Insecticide Board. I am merely trying to state certain facts that have come to my knowledge with the hope that through the statement of these facts, we can find some way to eliminate what appears to be some of the long delays in trying these cases. We have first taken the last 86 cases that have been referred to the Solicitor's Office and have averaged them up so as to determine to some extent the time taken by the Board in handling these cases, and the time taken by the Solicitor's Office in handling these cases. Further on I will discuss the time taken by the Board in its various branches in handling these cases, to try to see just where our efforts should be directed to hastening matters. These last 86 cases that I am speaking of now have been referred to the Solicitor's Office. These are cases which have not yet been reported to the Department of Justice but have been reported to the Solicitor's Office.

MR. CAFFEY: That is on the date on which you made up your figures?

DR. HAYWOOD: Date of February 20, 1916. These cases had not been reported to the Department of Justice. In these cases we found that the average time between the interstate shipment and the report to the Solicitor was 15 months and 6 days. That was the time taken by the Board. The average time between the report to the Solicitor and February 20, 1916, when these cases had not been reported to the Department of Justice, was five months and 22 days. Therefore, it appears in these 86 cases that the Board had taken approximately 15 months to report the cases to you, and that your office had taken five months and 22 days and had not yet reported the cases. I am not making this in the manner of criticism, but merely because I will take up later certain suggestions that I have to make in regard to this. Now of the 151 cases just before these 86 cases, that had been reported by the Board to your office and have been reported now to the Department of Justice - 151 cases - the average time between interstate shipment and the report to the Solicitor was 17 months and 3 days. Thus, the board took 17 months and 3 days to do its work on these cases. The time between reporting to the Solicitor and reporting to the Attorney General was 5 months and 22 days, exactly the same as in the 86 cases. Therefore, the Solicitor's Office took 5 months and 22 days to report those cases to the Attorney General. I will discuss this for a few minutes before discussing the time taken by the individual units of the Board in handling these questions. It seems to me that this summation of cases shows that we have taken too long to report cases. Seventeen months and 3 days for a certain lot of them, 15 months and 6 days for another lot of them. It also seems to us that the time taken by the Solicitor's Office in reporting these cases is beyond what it should be, that it is unreasonable for a case to take nearly six months to go through the Solicitor's Office. Now, in saying this there is no criticism directed at my friend, Mr. Gates, because I know Mr. Gates is a hard working man and we never go over there but we find him plugging away, but I do believe that Mr. Gates has not sufficient help

or is taken up more with other work in your office that causes him to be unable to handle these cases promptly. It does seem that it would be reasonable to believe that a case that is well prepared, if we are preparing them well, should be handled by the Solicitor's Office in a month's time, and not five or six. If we can reduce this to one month, it would save five months, which would reduce our average very materially. Now take up cases which have gone to your office and some of which have been reported to the Department of Justice and some of which have not been reported, we can get an idea of what the Board is doing along these various lines, and we have taken 196 cases, which means about two-fifths of all the cases that we have reported since the law went into effect, because we have not nearly the number to report that they have under the Food and Drugs Act, and so it is a very good average of cases for the last two and a half or three years. The average time between shipment of the product and the collection of it, thus showing what the inspectors are doing, has been 2 months and 20 days, which is nearly 3 months. Now the maximum between the shipment and the collection has been 12 months and 24 days. It appears to me that this summation shows that our average here between shipment and collection is very good, 2 months and 20 days, as you can hardly expect the inspectors to go out and collect samples within a month of shipment. Two months and 20 days appears to be very good but the maximum of 12 months and 24 days appears to be too much. Therefore, it is my notion to direct our inspectors as a great general average not to take samples over three months old - between time of shipment and time of collection - but in individual cases they will sometimes. I do not want to make that a general and fixed rule. In individual cases they will have to deviate from that because we may be anxious to get some particular goods and the inspectors will be looking for them, and finally they will come across a shipment over three months old. As we are anxious to have them it will be better for him to take them even if over three months old, but we will warn them to reduce the maximum from 12 months and 22 days and are prepared to give orders to them to that effect. Now relative to the next step, when a sample is sent to the Board, this is to show the time between the collection and the report on this sample (whether it is adulterated or misbranded) to the Board by the various agencies, the four agencies that have to do with our Board. The chemist has to report his finding, whether adulterated or misbranded, the Plant Industry man has to report his. Entomology has to report its findings and Animal Industry has to report its findings. We find that the time taken by Chemistry, as an average, to make its report to the Board is six months and six days. I will say that we feel sure with the Bureau of Chemistry that we can reduce that time. One of the causes of it has been that a great many of these samples are bacteriological samples. We were depending on the Bureau of Chemistry to do this bacteriological work as a matter of courtesy. It was not our man paid by the Insecticide Board doing this work in the Bureau of Chemistry. The consequence was that that man naturally felt Food and Drug samples were much more important than Insecticide samples and he would do those first, and the consequence is that they took a great deal of time to report these samples. That greatly raised the average time. We have met that and Dr. Alsberg has set a man to do nothing except Insecticide samples and we feel sure we can greatly reduce that time. Now the time between the collection and the first report of Entomology to the Board as an average has been 9 months and 8 days. The time between collection and the first report of Plant Industry to the Board has been 8 months and 10 days. The time between collection and the first report of Animal Industry to the Board has been 6 months and 10 days, practically the same as the Bureau of Chemistry - a little more. There are good reasons why Plant Industry and Entomology are showing a high average. They have to wait for insects or fungi in testing samples of insecticide against a certain insect or fungus. It is not a question of testing a particular sample once on the tree against a particular insect or fungus. He must follow out the spraying schedule laid out for that insect or fungus, which

oftentimes makes it necessary to test the insecticide or fungicide beginning in March or April on the trees for that insect or fungus, and by regular spraying schedules spray the trees until September or October. In consequence of that, it takes a long time to test a suspected sample against special insects or fungi and 9 months and 8 days for Entomology and 8 months and 10 days for Plant Industry are not unreasonable times for a test of their samples. We are going to try to reduce that average. However, there will be individual cases that will take that length of time. We can not help that but we can try to reduce the average by asking Entomology and Plant Industry to immediately report back those cases in which they expect to prove misbranding by expert testimony. If they do this we think we can reduce that average very materially for these two branches of the service. Now, the next item that I think is one that has taken too much time to handle comes between recommendation for citation and receipt of the hearing report back to the Board. The Board recommends citation, but it has to go to hearing. It comes back to the Board, how long does that take? We find out that it takes an average of 2 months and the maximum is 8 months and 19 days. It is unreasonable for a case to take 8 months and 19 days to have a hearing on it. This is an unreasonable length of time, undoubtedly, and we can, by studying those cases where the maximum time has been taken, reduce those, which will reduce our average. I believe further that we will be able to reduce that average below two months; and two months appears to be too much time for a hearing. The trouble has been, Mr. Solicitor, that we have been handling certain of these cases through the Bureau of Chemistry - another organization holding our hearings for us (either Plant Industry or Entomology) in various parts of the United States, because we have no branch laboratories, and we had to handle this through the Bureaus, asking the Bureaus to do it, and the Bureaus directed their laboratories to do it. We have recently entered into a scheme whereby we will be able to directly handle these hearings through their men in the field and by that we think we can reduce the time of holding a hearing. Another thing is the manufacturer asking for postponement of hearing. He will be told that it will be held July 17. He will say: "Put it off to August 17. Some man is out of town. I want it held later;" then he will come and say: "This man is sick in bed, will you put it off two weeks or another month?" As a result it is put off. The time between the citation and hearing has taken quite a little time. I don't quite see how we can reduce that time very much because we must accept the manufacturer's reasons and give him the feeling that we are giving him all the chance to state his side of the case that is possible. Now, the next item in this case is the time that elapses between the receipt of the hearing report and the recommendation for prosecution by the Board. The receipt of the hearing and the recommendation for prosecution by the Board, that time is the time that it takes the case after the hearing is held to go around to the various members of the Board and have them all look into it and see what they think is going to be done on the matter. The average time for that has been 2 months and 9 days, in going around to each member, but the maximum time has been 22 months and 23 days. Twenty-two months and 23 days is beyond reason. We will take immediate steps to reduce that. There is no doubt that these Board members are busy with bureau matters and insecticide work is only a part of their duties. Put a case on their desk and they are not quite sure what they want to do about it; they stick it aside and intend to handle it tomorrow and tomorrow, as you know, never comes and they will wait until next week and then it is two weeks old and then this 22 months and 23 days, where a man has held it up that length of time. It is just a matter of explaining to members of the Board how important it is to reduce the time of cases, and we feel we can reduce much below 2 months and 9 days. It seems a case should go around in a couple of weeks and a month is ample, and I believe we can reduce that. I will say in sending these cases around the Board we proceed under the method of procedure laid down by ex-Secretary Wilson for carrying on our work. It might be better if the Secretary were to slightly change our procedure and

when the cases come back from citation, not have them go around the Board but have them merely go to the Chairman of the Board and let the Chairman of the Board merely consult with the four Bureau agencies that are there and ask them what they think about the case. Now, when they have outlined their charges, have the Chairman handle it by consultation rather than have it bodily go around the Board. I believe that would be a way of greatly reducing the time but we can not do that under the method of procedure and I do not say that to give the Chairman more power. I am the Chairman. That is not the idea. It will give to the Chairman of the Board a great deal more work to do, but it will reduce the time and we can get as good results by the Chairman consulting as by the case going bodily around the Board. When a man gets a thing on his desk he sticks it with the other papers and handles it in a routine way, but if a man comes to him and says: "What do you think of this situation?", he must get it out and immediately act on his charges.

The time taken between the recommendation for prosecution by the Board and the report to the Solicitor's Office, the matter of the central office after the Board has acted on the case, getting it in shape to go to the Solicitor, as an average, this has taken 27 days. That does not seem unreasonable because the central office has a large amount of work to do in getting all these cases ready for you, so that they are in good form. We can not reduce that unless we have additional clerical help and we depend on Congress for that, and have need of additional help. I believe that 27 days is a reasonable time for that. As a great whole, Mr. Solicitor, by my making it my business to stir up the various members of the Board and by you making it your business to see if perhaps your branch of the work does not need some attention, we will be able to greatly reduce the time of the cases.

MR. CAFFEY: That is a very valuable and very interesting lot of statistics you presented, Doctor, and it seems to me the analytical methods you employed there are most enlightening. I don't know anything more valuable than to apply the same method of anaylsis of the work in all the Bureaus. I think it would be very helpful.

DR. HAYWOOD: I think it shows right on the face of it where the trouble is, and then we know what branch of the service to go after to make a hurry call on.

MR. CAFFEY: Until we have got the underlying facts, we can't see just what the problem is.

MR. GATES: Dr. Haywood used the term "cases" just now. I think he will concede that the word has a double significance. The Board refers to the cases, I take it, in the same way he does, as the individual sample, as the domestic number. A case, as we report it to the Department of Justice, in many instances involves two or more cases, two or more domestic numbers. That in a manner reduces largely the great percentages stated.

MR. CAFFEY: The question you ask is whether in making up the tabulation there, Dr. Haywood treated as a case the domestic number, is that right?

MR. GATES: We use it between the office and the Board with perfect understanding, but it might lead to some confusion here.

DR. HAYWOOD: Mr. Gates, where I was referring to the great average of the time taken by the Board to handle its cases and the time by the Solicitor, those were actual cases which might in a great many cases include half a dozen domestic numbers under the case number; while in the case of explaining the work of the Board itself, within the Board and before reporting to the Solicitor, showing the actual time it took to handle them there, those are handled on the basis of samples or domestic numbers.

MR. GATES: In connection with the matter of delay in reporting cases for prosecution, there is that question of affidavits. The great trouble of the Board is in getting affidavits. That five months' delay in the large number of cases, taking Dr. Haywood's average in the 150 and the 86 cases, can be attributed in a large measure to that difficulty. The elimination of the dealer's affidavit and the adoption of the new form of the collector's affidavit is going to eliminate from 75% to 90% of the five months' delay after the case is written up. Fully half of these cases that Dr. Haywood mentioned have been written up, but have not been sent to the Attorney General because they are all awaiting the arrival of the affidavits which I am satisfied the Board is duly diligent in requesting, but for some reason or another, they haven't succeeded yet in securing from the dealer. Sometimes there are a good many cases located at distant points, such as San Francisco or Portland.

MR. CAFFEY: Just in that connection I will say something I am reminded of, Mr. Gates. Heretofore, the matter of the expense of procuring affidavits has been a very considerable item. For instance, take the Bureau of Chemistry. They collect in a year say 10,000 samples. We will say that 1,000 of those only eventually are recommended for prosecution. You have 9,000 of those cases, therefore, in which you didn't need any affidavit. The expense of getting an affidavit I think we figured ran somewhere between 50 cents and a dollar on the average. Was that right, Mr. Henderson?

MR. HENDERSON: Yes, I should think so.

MR. CAFFEY: You take 10,000 cases; there is from ten to twenty thousand dollars, which is the expense of the fees for the affidavits if you have got affidavits in all the 10,000 cases. In addition to that, there is considerable incidental expense of the Bureau employees. So, on account of that expense it has been the practice of the Bureau of Chemistry, and I take it of the other Bureaus, to wait until they found whether they were really going to need an affidavit. When you need an affidavit, frequently you have to wait until your inspector is going out in that neighborhood again. That brings about a lot of delay, unless you are going to incur a direct expense of the time and travel of an inspector, to send him to get the affidavit. In order to facilitate its procurement, you have to wait until your inspector goes out in that neighborhood. Having that in mind, at the last Congress there was submitted a bill, which was prepared in the Department, authorizing employees of the Department engaged in the enforcement of these various regulatory acts to take the affidavits; in other words, to act as notaries public themselves anywhere they happened to be, so that they could take the affidavit at the time of the collection of the samples without any expense. That bill was introduced, was it not, Mr. Henderson?

MR. HENDERSON: Yes.

MR. CAFFEY: Introduced, but not acted upon, at the last Congress. We are submitting it back to Congress again at this session. Of course, in the crowded calendars there may not be much chance of getting it enacted. At least we are keeping it before Congress. If enacted, that would effect a great economy, in directly relieving your appropriation from having to pay the fees of the various officials who take the affidavit, but a very much greater economy in the incidental expense. It would be of still further beneficial effect in enabling you quickly to dispose of the cases and to employ your inspectors in going elsewhere, rather than chasing back out to the field to get affidavits.

MR. HENDERSON: I was just going to suggest something along the same line as Mr. Gates did. Dr. Haywood's figures were very instructive, but they didn't include the average time between the completion of the information and the return of the executed affidavits, and without that, it is not possible to tell from those figures just where the delay occurs during that five months. In regard to the Food and Drugs cases, before we adopted this new

[illegible]: In connection with the matter of delay in re-porting [illegible] for prosecution, there is that question of affi-davits. The great trouble of the Board is in getting affidavits. That five months' delay in the large number of [illegible], taking Dr. Haywood's average in the 150 and the 36 cases, can be attributed in a large measure to that difficulty. The elimination of the dealer's affidavit and the adoption of the new form of the col-lector's affidavit is going to eliminate from 75% to 80% of the five months' delay after the case is written up. Fully half of those cases that Dr. Haywood mentioned have been written up, but have not been sent to the Attorney General because they are all awaiting the arrival of the affidavits which I am advised the Board is duly diligent in requesting, but for some reason or other, they haven't succeeded yet in securing from the dealer. Some cases there are a good many cases located at distant points, such as San Francisco or Portland.

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form of inspector's affidavit, and to a certain extent right now, the longest time, or the most unexpected length of time, elapsed was between the return of the information to the Bureau of Chemistry for criticism or suggestion with the forms of affidavit and its return again to the Solicitor's Office with the executed affidavit. That sometimes would compare with the time that the case stayed in our office, maybe two, three or four times as long; that is, the maximum might run up to a year in some isolated cases. The average, I don't know what it was, but it was considerable. We usually had on hand from two to three file drawers full of prepared cases waiting for the return of executed affidavits. That wasn't because the Bureau wasn't anxious to get them back quickly, but because it was so expensive and troublesome for the inspectors to get the dealers to execute those affidavits. I think a good deal of that will be removed by this new form of affidavit.

DR. HAYWOOD: I recognized the fact that the inspector's affidavit is greatly going to reduce this apparent time taken in the Solicitor's Office and I am not at all doubtful of what both Mr. Gates and you say, that a good deal of that time in a good many cases is taken up by the time necessary to procure the affidavits, and especially the dealer's affidavit.

MR. CAFFEY: If we can get this authority for the inspector to administer the oath, and take the affidavit, at the time he collects the sample, it is going still further to reduce the delay.

DR. HAYWOOD: My only idea in bringing this up was that if it does take five months and 22 days to handle a case after it has been reported to your office, which we will call your part of the work, then Mr. Gates in our case, and the other genetlemen along the other lines, can average up some of your cases and find out how much of this period was necessary to obtain the affidavits. That could be better found out from the Solicitor's Office, how long between the time that they sent it back to the Board or Bureau and got it back. By this average of mine, in addition to an average which Mr. Gates could get up, we could find out just where that delay took place. And with just that one more step in the matter, we will have the thing in a form where we will know just where the delay is occurring and be able to get around it perhaps. It wasn't a matter of criticism. It is just bringing it up for discussion so that we will all have it before us, and if that one extra step is taken in the Solicitor's Office, then we will know just where the delay does occur, and can take means to avoid it in the future.

MR. STENGEL: Mr. Caffey, I haven't prepared as well on the subject as Dr. Haywood has.

MR. CAFFEY: But don't you think that method of anaylsis is a fine thing?

MR. STENGEL: Yes, that method of analysis presents the thing in a concrete fashion. The Bureau of Chemistry has had some Food and Drugs cases where there seems an abnormally long time elapses between the commission of the offense and reference to the Department of Justice. However, we are not always in a position to put up selected cases. The inspectors in the eastern inspection district have instructions never to pick up samples that are more than a year old, and always, if possible, to secure samples from shipments as recent as they can find. You can understand that where a sample is from a recent shipment, it will reduce by just that much the time between the commission of the offense and the reference to the Department of Justice. The consideration of the cases in the Bureau of Chemistry is becoming more highly specialized than ever, and that in a general way requires more time, but I think it is most economical because it saves delays which have frequently arisen after cases have been referred to the Solicitor's Office which required reference back again to the Bureau for some additional information or for data. Then there are a number of cases coming up recently in connection with the net weight and measure amendment. A sample may be collected, a number of units examined, and found short in volume. The amount of the samples may not have been sufficient to enable the Bureau to come to some decision as

to whether or not there was a distinct violation. Instructions are sent out to obtain duplicate samples. An examination of those requires more time and a loss of time between the date of shipment or the commission of the offense and the reference to the Department of Justice. The same thing is true of a great many other samples where duplicates are necessary and further examinations are required. These are just instances that I cite of reasons for delay which are not always apparent in the face of the cases. Nothing else occurs to me just now that I might say on this matter. I really have no suggestions to offer as to any means by which time might be saved. I think Mr. Henderson is better familiar with those cases, and probably better able to talk on them than I am.

MR. HENDERSON: Mr. Caffey, I think it might be fair to the Bureau to mention two or three methods that they have adopted to cut out some of the lost motion and save time. Of course, I don't know anything about the workings in the Bureau except as I have heard Dr. Alsberg mention or Dr. Emerson. But I understand that a great deal of the delay in some cases in the past was occasioned by correspondence. The case after citation was referred by the chief inspector back to the laboratory interested in that kind of a case. And there it often stayed for six months to a year and a half while they corresponded with the man about the reformation of his labels and when the man got his labels all corrected so that they couldn't criticize them any more, it was referred back for prosecution. That resulted in two things: it took up a lot of time, and made the man sore when we prosecuted him. They have changed that method so as to eliminate a lot of that time. They do their corresponding in those cases where they expect to correct the misbranding, and cut out as much correspondence as they can in those cases where they believe that it is their duty to prosecute, and that will probably save a great deal of time. Then I understand that there was some delay caused by the energy of the inspectors who collected more samples than the Bureau could handle. So they have once or twice found it necessary to call off the inspectors so that they wouldn't overload them. The trouble sometimes, I understand, has been not so much that the inspectors are not busy, but the clerical force wasn't great enough to keep up with the inspectors. In the Sherley cases, there was a great deal of time lost there, so the Bureau states, through the collection of samples of what turned out to be very doubtful cases. The more doubtful the case is, the longer it takes everybody to study it over. They propose in the future to supervise the collection of the samples in the Sherley cases so as to select by some process those cases which they think are strong, substantial violations of the law. By the use of unofficial samples and other methods that they have in mind, but I think haven't yet put into practice, they expect to cut down a great deal of the time between the collection of the sample and the reference of the case to our office. Those are some of the steps that they have already undertaken over there which I think not only will, but have already, cut down the length of time.

MR. CAFFEY: There is one thing that just comes to my mind, Mr. Henderson. It is not under this head, perhaps, but I would like for you to state to the meeting what impressions, if any, you have gained with respect to the misuse made, in cases of prosecution, of the suggestions the Bureau has endeavored to give the defendant with respect to correcting his labels, either by correspondence or in additional hearings, after the case has been sent to the Department of Justice for prosecution. You didn't quite fully cover that phase in the discussion yesterday.

MR. HENDERSON: The times when you could say that the defendant has actually made improper use of what is said to him either in correspondence or in the hearing, I presume, are pretty small in number. We often don't like what he does. Sometimes in his advertising he refers to an activity in the Department against his product which has resulted either in actual acquittal in court, or in abatement, and we sometimes have pointed out to him that what he was saying in his advertisements was susceptible to the wrong construction. But where the trouble has resulted

frequently along that line is that he has told the truth to the United States Attorney and to the court, or at least has told the facts as they actually occurred, and then has said that in view of those facts he was led to suppose that the Department, on account of his changing his practices, would not press the prosecution. That may be a misrepresentation in every case, but we couldn't prove that it was. Where we corresponded with a man, or talked with him in regard to changing the label, and he promised to make that change, he might honestly believe that that was the end of the case, and that the Department was simply seeking to accomplish a reform in his methods of business, and that they didn't intend to prosecute him afterwards. He may tell that to the United States Attorney or the court, and the court and the United States Attorney generally believe it, and it prejudices the case, no matter how strong it was in the first place. So that sometimes the Bureau, out of the goodness of its heart in trying to be as helpful as it could to the manufacturer, was really cut off from enforcing the law by actual prosecution.

MR. CAFFEY: Have you anything to add to that, Mr. Stengel?

MR. STENGEL: I think not.

DR. HAYWOOD: There is one thing in this connection I want to speak of. First of all I will say that the Board believes that we get the very best revision of the labels that has been gotten in our cases, in our correspondence cases. We get the manufacturer to make changes that we would not hardly desire to prosecute him for, and we get more of an ideal label that way than we do by prosecution.

MR. CAFFEY: You get up to a higher ethical standard with that method?

DR. HAYWOOD: Yes. We take up a great many by correspondence and we believe it is justified by the results we have gotten. We have obtained a great improvement in labels by this correspondence. That does not mean that we let a man off if he has flagrantly violated the law. We do not. We prosecute these cases, but where a man has made an honest mistake, we have felt, where that fellow was the average citizen, we should not be too drastic in our action. We take it up by correspondence and usually get very good results. What I want to ask you and the rest of the attorneys here is this; what should we do in this case? We take a case up by correspondence. The manufacturer finally practically refuses to change his label. He does not come out and say in so many words "I won't change it," but you see from the correspondence that he is not going to change. Now it may be that these charges are not very strong charges, while we think it is important that they be changed and in such cases as that, you can immediately see that from the time we began to carry on this correspondence time has been elapsing, and when we report that case for prosecution, when the manufacturer will not change his label, it is a right old case, and this is one of the reasons why we have old cases. We have tried to get the manufacturer to change his label by correspondence, but the manufacturer would not change and we recommended it for prosecution, and we believe that with our statement to the court that we had given him all the chance in the world to change that under these circumstances, charges not so flagrant would be accepted by the court and be considered the same as strong substantial charges, whereas had we not said anything at all the court would not have considered them substantial.

MR. CAFFEY: I think so.

DR. HAYWOOD: Is it better in these cases not to have these cases recommended for prosecution or is it better to get new samples and then prosecute the man on these same charges, stating that we tried to get the manufacturer to change his label? Which should we do?

MR. CAFFEY: I think we should have a new sample. Don't you agree with that, Mr. Henderson?

MR. HENDERSON: Under the Food and Drugs Act, we think so because cases under that Act are not so expensive to work up as insecticide cases, but under the Insecticide Act, if it was impossible to use the evidence in the first case on the new sample, it might then be considered whether it is worth spending the money on that man and whether the money could not be spent on more important cases.

DR. HAYWOOD: In other words we should consider individual cases, but hold to our old case custom if the expenditure of a large amount of Government money is caused by the test of the sample. Now there is another case I would like the advice of the Solicitor's Office about. We get many samples of short weight products but in collecting our samples we only collect three or four samples of the product, perhaps only three. These often come in gallon, five gallon and, insecticide samples, in fifty pound containers. We can not afford to buy more than two, three or sometimes four samples. We do not feel that prosecution is justified on one, two, or three short weight samples, where the short weight is 6 or 8 per cent, unless we are pretty sure all the product is short weight. Therefore we immediately tell the inspector to get more samples, a dozen or six more, usually six, because to buy six gallon containers of a preparation is very expensive and all six are short weight in the same amount. In the meantime the first case has gotten older but we recommend the case to you and your office recommends prosecution of the case. The second is six months old, the first is two years and two months old, and now, should we bring our entire prosecution on the second case in order to avoid age, or should we combine the cases as we do and say it has continued for a length of time? Are we not, by showing continuation of the offense, justified in sending the old case to make a strong one?

MR. CAFFEY: What do you say, Mr. Gates?

MR. GATES: That practice has generally been adopted.

MR. CAFFEY: That is including all of the cases?

MR. GATES: Yes, especially in short weight cases, and I do not see any reason for deviating from the practice we already follow.

DR. HAYWOOD: There is just one other style of case. It has been the practice of the Board, when we make a seizure of the product and seizure is consummated favorably to the Government, usually not to prosecute that case; but there are exceptional cases where we feel that the manufacturer should be prosecuted in that case as well as the goods seized, because it is such a flagrant case of adulteration that any manufacturer should have known he should not have put it on his label; but in recommending our prosecution on this case, we have always held up our action to recommend prosecution on the case under Section 2 of the Act until we have a statement from the United States Attorney, or your office, that the seizure has been consummated in favor of the Government. We have done that because we felt that we would go with a still stronger case to the United States Attorney if we had the seizure in which the man had pleaded guilty to back us up as well as the evidence in that case. And oftentimes the United States Attorney takes a good long while to let us know that the case has been terminated favorably to the Government. Now, is it better in that case to take that case up and present it on the basis of the old sample or to get a new sample, which means a large amount of tests, oftentimes? This is a matter, it appears to me, of conservation of funds that we have and it appears to me that it is better to report the old case than go ahead and get a new case.

MR. CAFFEY: Well, then, before that is discussed, I would like to suggest for consideration another phase of that same matter that comes up when there is a seizure under the Food and Drugs or Insecticide Act. Not infrequently the financial loss under the seizure falls on one man, whereas the offense, if any, under the statute has been committed by another man. Now the financial loser,

we find very frequently, is extremely sore if we do not prosecute the man who has caused him that loss.

MR. HENDERSON: That is right, we have received that information many times.

MR. CAFFEY: We have that question coming up right along and, while a little aside from the issue, it is connected with the delay you have brought up. I would be glad to hear discussion on that point. Mr. Henderson, have you some views on that subject?

MR. HENDERSON: I know it has been practiced and is practiced now in the Bureau to delay citation, is it not, Mr. Stengel, until termination of the seizure case?

DR. HAYWOOD: We do not delay citation, we delay action. We cite him upon seizure.

MR. CAFFEY: Do you uniformly cite him?

DR. HAYWOOD: Yes.

MR. CAFFEY: Do you uniformly cite in the Bureau of Chemistry?

MR. STENGEL: Not while the seizure case is pending.

MR. CAFFEY: Do you subsequently follow it up by citation?

MR. STENGEL: Not always. It is my understanding that there are cases that are abated by the outcome of the seizure cases.

MR. CAFFEY: A United States Attorney was in my office within six weeks and was telling me of a case in his district in which there had been a seizure. The goods, I think, were decomposed and the consignee who had them in hand came in immediately. He was glad to have the Government destroy them. He did not want to sell any goods that were decomposed. He had closed his account with that manufacturer and he was unable to get any reimbursement from the manufacturer. The loss fell unfairly on him. He had been waiting some time to see the Government go after the manufacturer and was as sore as he could be at the Department for not having done so.

DR. HAYWOOD: You can understand his feeling.

MR. HENDERSON: Some of the United States Attorneys are of opinion that we should follow up the seizure by criminal proceedings in order to get back into the Treasury some of this money that the seizure costs. In New York, where we have a number of seizures, Mr. Marshall has written us several times to prosecute some of these people who are responsible for that amount of money being expended. In uncontested cases nobody pays any costs but the Marshal, and, of course, he does not get it back from anyone. I have never talked with anybody about the desirability of holding up criminal cases until the seizures are terminated. The chances are there is good reason for holding them up. And, no doubt, there is good reason for not referring every case for prosecution.

MR. CAFFEY: And particularly in cases where the person who would be prosecuted is different from the person upon whom the financial loss falls.

MR. HENDERSON: In other words where there is good excuse for the delay and it is not especially unfair to the defendant.

MR. CAFFEY: Dr. Smith, I would like to hear from you on Subjects 8 and 9.

DR. SMITH: In connection with meat inspection cases, the collection of evidence is very simple. We have inspectors located in 235 cities, so we can get the information very quickly and at a very small expense. Concerning the time between which the offense was committed and the time the correspondence is transmitted to

your office, I believe as an average it is from one week to one month. I think that our cases remain in your office about two months and I have seen cases that have been reported back to us as being referred to the Department of Justice within one week. I have nothing to suggest as to expediting meat inspection cases.

MR. CAFFEY: Dr. Palmer?

DR. PALMER: Mr. Chairman, I have very little to add to what has been said this morning, but there is one phase of this question which has not been brought out and might well be discussed at this point. Question number 9 seems to suggest the reduction of time between the commission of the offense and the transmission of the case to the Department of Justice, as if that were the end of the whole thing. It seems to me that the real way to consider these cases is from the time of the commission of the offense until the case is closed in the courts. I can well understand in cases under the Food and Drugs Act and the Insecticide Law, involving a lot of the samples collected in established places of business, that in nearly every case it is of advantage to transmit it to the Department of Justice with the utmost speed and to prosecute as promptly as possible. Some of our cases, I think, are a little different. I think there is comparatively little delay when our case is complete in transmitting it to your hands, and there is comparatively little delay in your office in transmitting it to the Department of Justice. But a number of our cases arise in districts where the terms of court are held but once in six months and sometimes once a year. We have unfortunately found in several instances that after going to a great deal of trouble and some expense in collecting the evidence and transmitting the case in the usual way, it reaches the United States Attorney shortly after a term of court, and necessarily remains in his hands possibly four, eight, or ten months before he can act on it. When the time comes for the next term of court, this case may have slipped his mind, some of the papers may have been misplaced, and he comes back for a duplication of the evidence. In one instance here in the District of Columbia, the papers were apparently lost between the Department of Justice and the United States Attorney's office and we were asked a year after the case had been referred to the Department of Justice to duplicate the evidence in a violation which had occurred two years before. Bearing that in mind, it was our practice when we thought there was any danger of that kind, not to refer the case until a reasonable time before the term of court, and thus what may seem a delay on our part is not actually delay. It is a precaution against possible loss of the case, or some of the papers in the case, or loss of interest in the case on the part of the United States Attorney in holding it so long in his office. May I touch on the question of obtaining the records of the completed cases in the Department of Justice? What I say is not by way of criticism, but entirely by way of suggestion.

MR. CAFFEY: This is after the United States Attorney or the Attorney General informs this Department as to what the result of the case is?

DR. PALMER: What I had in mind was following up the case from your office after it has been referred to the United States Attorney.

MR. CAFFEY: We have a system of sending letters to the United States Attorneys----

DR. PALMER: As I understand it, the practice has been to send out letters periodically to the United States Attorneys, asking what has been the result in certain cases, usually either before the preparation of an annual report or at the close of the calendar year, or at some interval of the kind.

MR. CAFFEY: We used to do it, Mr. Goding, how often?

MR. GODING: We are doing it at present every six months, the first of January and first of July. We used to do it the first of October, the first of January and the first of April, three times a year. But in view of the fact that most of the courts hold no

terms in the summertime, we thought it was useless to write them on the first of October. We could get the information just as well on the first of January.

DR. PALMER: What I have to suggest may not be feasible but, if it could be done, would result in more satisfactory results. I have been somewhat disappointed with the reports of the United States Attorneys in a number of our cases. It occurred to me that if it were possible to make a schedule of the cases pending with reference to the terms of court, and have a form by which the United States Attorney's attention could be called to cases shortly before the cases came up - or the important ones, at least - or immediately after the term of court calling for reports, with the costs, which are not always reported without some correspondence, I believe the results would be more satisfactory. Some years ago when we did not have the assistance of the Solicitor's Office in handling the cases because there was no Solicitor's Office, it was our practice to make a schedule of every term of court in the country where we had cases pending, and in any doubtful case call the attention of the Department of Justice to features which we considered important, before the case occurred. Then within ten days after every term of court to ask the Department to obtain a special report if they had not already done so. They evidently regarded it somewhat as a hardship; at least one attorney told me that we followed up our cases more closely than anybody else, but the results were eminently satisfactory. It is too late three months afterwards to remedy any defect in the result of a case, whereas a week before the trial we might have guarded against a loss. I think if a scheme of that kind could be worked out, the results would be well worth while.

MR. CAFFEY: That is a very good suggestion. I might say one further thing with reference to these reports. The United States Attorneys are required by the Department of Justice to make monthly reports to the Attorney General. Some months ago we took up with the Assistant Attorney General, who has special charge of the Department of Agriculture cases, a proposal that the United States Attorneys be authorized to furnish to the Department of Agriculture a carbon copy of the report with the Department of Agriculture number of the case, or if not of his entire report, at least of the portion of it which covered all the Department of Agriculture cases. He fell into the suggestion quite readily. However, under the rules of the Department of Justice, that could not be put into universal application throughout the country without an authorization from the Attorney General, which could only be procured after rather elaborate explanations. But the Assistant Attorney General himself, without taking the matter up formally with the Attorney General, was willing himself to instruct the United States Attorneys in particular districts, where we had a considerable number of cases, to furnish us carbon copies of those reports. He asked us to select the districts in which we had the largest number of cases, not to make the list too long, and he would try it experimentally. We furnished him that list. That hasn't gotten into complete operation yet, has it, Mr. Henderson?

MR. HENDERSON: Yes, we get reports from fifteen districts.

MR. CAFFEY: You get them too, Mr. Gates?

MR. GATES: Yes, sir.

DR. PALMER: Do they always give you the costs?

MR. GATES: No, sir.

MR. CAFFEY: We frequently have to write letters back because of the incompleteness of the information when they send it in. Of course, in your cases, Dr. Palmer, you not infrequently are concerned with the districts where there are comparatively few Department of Agriculture cases, because in your game cases you get out into country courts more than they do under the Food and Drugs Act or the Meat Inspection Act or the Insecticide Act.

DR. PALMER: May I suggest a matter right there? I think your suggestion to the Department of Justice is most excellent, and I see no reason why in some modified form it can not be put into effect. It may be of interest to mention that for some years we have had in effect with the Treasury Department a similar arrangement as to reports on the inspection of foreign animals. The usual procedure is for the importer to make application to the Department for a permit. On the issuance of the permit and the entry of the consignments, the inspector of the Department examines the shipment and makes a report. In addition we arrange with the Treasury Department to have the collectors make an independent report to the Treasury Department and those original reports are sent to the Biological Survey regularly. The reports from New York and San Francisco are very voluminous because, for example, they indicate the number of individual canary birds brought in by each passenger, some hundreds every quarter. These reports are compared with the reports and original applications on file in the Biological Survey. With the system once working, it seems to cause no special trouble to the Treasury Department, and it has been the means of our uncovering a number of evasions of the regulations, which otherwise we should never have found. Apparently there is no reason why the Department of Justice can not do the same thing and the reports would be much less voluminous.

MR. CAFFEY: Mr. Raub, anything on subjects 8 or 9 that you want to add?

MR. RAUB: I have no figures prepared, but I might state that we have taken steps to provide prompt reporting of the cases from points where they occur by taking it up with those inspectors who attend to such duties, and by getting up new forms which they will have to fill out and send in promptly. There is possibly some time lost here at Washington, possibly through my fault, after the case is sent in from the field. I have to go over it, and then there is correspondence to get information which is necessary to straighten out discrepancies, and so forth. But I believe that when our men throughout the whole country get to working under the new system which we have inaugurated, we will get our cases over very promptly. I believe that in the figures which were gotten up on the delayed cases, the 28-hour law stands somewhere near the bottom. I think the cause of that is due to myself again. I don't know but what under the disposition of stale cases, I will take that up, but I want to add that the reason for these cases being stale, and the 28-hour law being so far down the ladder, is on account of the immense number of cases and the kind of work which we are undertaking. They were started in with the Lake Shore R. R. and the Nickel Plate R. R., going over their records. We were told that they were doing certain things which were rather contrary to the provisions of law. After I had started investigations on the Lake Shore and the Nickel Plate, the Nickel Plate R. R. wanted to settle, and they wanted to have all their cases off the books and wanted to start out fresh. The Solicitor's Office then asked that the Nickel Plate cases be given preference.

MR. CAFFEY: In other words, you have to take them up in the way of a campaign in particular areas, and sometimes against particular carriers, in order to get the whole situation cleaned up?

MR. RAUB: Yes. And in particular all the trunk lines coming out of a district, carrying the stock from the West, or from Chicago, Indianapolis, Cincinnati, Louisville, Kansas City, into Buffalo and East to Boston and New York. The campaign was started to get all these roads to a certain basis on which they would handle shipments alike. To do that we had to make a start somewhere, and it made some very old cases. We still have some of them that haven't been reported yet.

TOPIC X.

Benefits To Accrue in the Effectiveness of the Administration of Regulatory Laws by the Quickness with Which an Offense is Followed by Punishment.

MR. WILLIAMS: Mr. Caffey, I think it is axiomatic that the quicker punishment is inflicted for the commission of an offense, the better effect it will have upon the person convicted and the community at large that, through the processes of the courts, finds out about these things.

MR. CAFFEY: As a deterrent?

MR. WILLIAMS: Yes. And also I think it has a psychological effect upon the people that are enforcing the law. When you deal with a thing that is fresh, you deal with it with a great deal more interest. When a thing lies around a while and begins to get a little stale, the inclination is to put it off a little bit longer and a little bit longer. If everybody gets into the habit of handling the case quickly, there is no doubt but that everyone will feel a great deal more interest in the prosecutions, and certainly the courts are disposed to act more favorably upon the cases that we report to the Department of Justice for submission to the courts. As I have said at the beginning, I think it is axiomatic that that is so.

MR. HENDERSON: I think that Mr. Williams touched on the right point when he spoke about the psychology. I don't know much about psychology, but I think he is working along the right line. The principal advantage, it seems to me, apart from the deterring effect it may have upon others, is the creation of a sound, healthy public sentiment in favor of the enforcement of the particular Act. That starts with the United States Attorney and the courts. It is also extended by the means of notices of judgment in our cases throughout the people engaged in business, and even the defendants themselves don't feel so bad about it if they can realize that they are justly punished. But they do oftentimes feel that they are unjustly punished when the prosecution follows long after the commission of the offense, and long after the reformation of the bad practice, and the notice of judgment telling everybody in the world about it follows a year or so after the prosecution. So these old cases, I think, do their worst in creating a bad sentiment, a feeling among the people that the law either isn't a very good law, or isn't being enforced properly; whereas, if we can act promptly, everybody is interested in the case, as Mr. Williams suggested, and we are dealing with live matters, and not, to use another one of Mr. Williams' expressions, "rattling dry bones."

MR. GODING: I would like to ask a question on this subject: Under the live stock quarantine law, is there any benefit to accrue from the prosecution of the case after the quarantine has been entirely removed say for six months? Is there any benefit to accrue in prosecuting that case at all six months after the quarantine has been lifted?

MR. CAFFEY: Well, what is your suggestion about it? Frequently you have to reimpose quarantines. You are going to have some more quarantines in that same section.

MR. GODING: I don't know. I am talking about foot-and-mouth disease principally now. I can illustrate that by an example, I think. During the foot-and-mouth disease outbreak, which has practically been eliminated from the country now, there was a certain circus traveling around the country, and they deliberately violated the quarantine law and the foot-and-mouth regulations. It is a question in my mind whether it is going to do any good to prosecute that circus at this late date in view of the fact there is no more foot-and-mouth disease in the country. On the other hand, there are other circuses which abided

by the law and the regulations, which refused to move their animals which were prohibited by the regulations from moving interstate on account of those regulations, and they think that if we don't prosecute that circus we haven't treated them fairly. It seems to me under those circumstances, we should prosecute this particular circus. They are collecting some evidence in that case now, and I don't think that under those circumstances this circus should go free. In that connection this is another argument for the benefit to accrue from the prompt prosecution of an individual case while the quarantine is still in effect, wherever possible. Of course, in this case it hasn't been possible to do that because it has taken so long to collect the evidence.

MR. CAFFEY: Any further discussion?

MR. STENGEL: I think there is no question of the value of speedy punishment not only as a deterrent to the violator and other people but also in my experience it has a decidedly stimulating effect on the men who are interested in working up these cases. There is nothing that stimulates a man's spirit like when something he has been doing work on for three years has just terminated successfully. That is one point I want to emphasize. It has a very stimulating effect on the workers in the field to know that their efforts are meeting with some results, not necessarily in a spirit of vengeance, but they feel they are getting somewhere.

MR. GATES: I think the most important of the benefits that accrue from quickness in the administration of statutes is the effect on the prosecuting officers and the court. The effect on the United States Attorney has been illustrated to me in one or two instances in the past year or two. On one occasion I visited the United States Attorney for the Southern N. Y. district, one of the most important districts where we have cases under the Insecticide Act and under the Food and Drugs Act, and he called my attention to the fact that in the cases he had received, a considerable interval had elapsed between the commission of the offense and the time they came to his notice, and I took occasion at the time to explain to him the necessary delay in the course of preparation of the cases and getting them to the Department of Justice. The United States Attorney is naturally more interested in the newer cases. Cases should go through as quickly as possible.

MR. RAUB: It has been my experience that a lot of our old cases bring more results than the new ones. I bring along new cases and will often get a $100 fine. They will come in and plead guilty and pay the minimum penalty of $100, but if I go back and get a lot of old cases, they will spend thousands of dollars in improving the conditions under which the animals are handled.

MR. CAFFEY: That may be true in this particular class of cases with which you have been dealing. Well, suppose you had been prosecuting this particular carrier and every one of your cases had been brought up immediately after the offense; the probability is you would not have had so many cases.

MR. RAUB: If we attempted to do that, you and I and the judge would not live long enough to see it through.

MR. CAFFEY: That occurs from the fact that for many years the 28-hour law was a dead letter.

MR. RAUB: Yes, it was for a long time. The railroads went ahead and did things they knew they should not do. They got into the way of carrying animals regardless of regulation. They paid no attention to the statutory time, and coming back to that, we would not have gotten results without bringing up old cases.

MR. CAFFEY: You are undoubtedly correct in this. When we had 250 to 700 cases in a bunch, we put them in a position where they were willing to provide elaborate facilities along their lines for handling cattle, feeding, watering and resting them; whereas, if we had had just two, three, or four cases, they would never have gone to that great expense. If a carrier has 700 cases against it, you can prove each and the minimum fine is $100, it begins to figure out if it cannot get some benefit and spends money on his own improvements. A fine paid into the United States Treasury is lost to the carrier. You can do this in the instance you refer to by having a large number of cases. I doubt whether that is true under any other of the statutes here. It has been under the 28-hour law.

MR. HENDERSON: Would you, years after new methods had been adopted, prosecute for offenses committed before they adopted these methods? Would that be looked upon with favor?

MR. RAUB: There has not been any change in the law.

MR. HENDERSON: The change in the methods of the railroad?

MR. RAUB: They did not do that until we had a sword over their heads.

MR. HENDERSON: The condition under your Act and under the Food and Drugs Act would not be quite analogous unless between the commission of the offense and prosecution there had been a reformation. Oftentimes the manufacturer has completely changed his brand and has for a year or two when confronted with prosecution. That is why they do not like these old cases.

MR. RAUB: There has been no change. It is a continuation of the same method of handling.

MR. HENDERSON: The condition that we have in some of the cases does not exist under your law.

MR. RAUB: No. I do not think so. Against one of the roads we had 600 cases, running right back to the period of limitation. They spent $40,000 in improvements. If we had come along with a single case, they would have paid the fine.

MR. CAFFEY: Yes. In that particular case, because the Department of Justice dealt progressively and liberally with the matter, and gave the defendant credit at the minimum fine for the money he spent on improvements; but that is different from all the other conditions existing under these regulatory laws.

Any further suggestions? Mr. Squire?

MR. SQUIRE: I believe I have no further remarks to make.

MR. CAFFEY: If agreeable we might discuss 11 and 12 together. If you are willing to stay a little longer, we may finish up the conference today. Do you think that would be agreeable, Doctor?

DR. PALMER: Agreeable to me.

TOPIC XI.
Disposition of Stale Cases.

TOPIC XII.
Disposition of Cases Held in Abeyance.

MR. CAFFEY: Suppose we proceed to subjects 11 and 12 and hear from Mr. Raub.

MR. RAUB: You are taking these together?

MR. CAFFEY: It occurred to me that we might discuss them together. Of course, they are two separate questions; however, they are two we might discuss together.

MR. RAUB: In discussing the disposition of stale cases, I would like to go back into ancient history. It may not be of interest to the other Bureaus, and it may. Some years ago the complaint was made against several railroads that they were not feeding the animals according to what the law required. I went over the lines of the Nickel Plate Railroad and the Lake Shore Railroad. I will take the Nickel Plate first. They have two feeding places on the line, one at Belleview, where I found they would bring their stock in and note on the waybill that the stock had been fed, watered and rested, and the record showed that the cars had been there for a period of about five hours, giving ample time to water and feed the animals, but the animals were not unloaded and were not fed or watered. Often the cars would come in and go out within an hour and yet the feeding record and waybill notation showed that the cars had stayed there for five hours. They started a plan of breaking the seal on the car, to indicate that the animals had been unloaded, but that was later discarded as being too dangerous. At Conneaut on the same line, they had an equipment of two pens. The records showed that they unloaded into these two pens 18 or 20 cars at a time. The records so far as the connecting carrier was concerned showed that the animals were fed, watered and rested. The cars were held there for five hours. The waybills always bore the notation that the animals were unloaded and reloaded, giving a period of five hours between the unloading and reloading. It was obvious that they could not unload 18 cars in 2 pens, and a thorough investigation was made. The result of the investigation was that I got 251 cases against them. There were under investigation 1,000 cars or more; out of that we got the 251 cases. The company spent about $16,000 in improvements in putting in a new feeding pen at Conneaut and another at Belleview, and paid a $5,000 fine. The Lake Shore had a corn house at Collinwood, Ohio, where a man shovelled corn at the car as it passed in the train. After the train had gone by they gathered up the corn and used it for the next train. They had no watering facilities in the yard, yet the billing was marked "Fed and watered." I had 751 cases against them, picked out of over 2,000 cars. They paid $20,000. The next road was the Wabash. I found practically the same thing and secured 250 cases against them. They agreed to make certain improvements and paid $5,000. The next was the Grand Trunk, practically the same as the Wabash. We had 613 cases against them.

MR. CAFFEY: They have spent $23,000.

MR. RAUB: $40,000.

MR. CAFFEY: That is right; $23,000 in one place.

MR. RAUB: They put in improvements amounting to $40,000 and were asked for $20,000 penalty. That brings me down to other stale cases. That covers four of the trunk lines running practically parallel, leaving two lines, the Erie and the Michigan Central Railroads, against which I am preparing similar cases. When I have them all prepared, the conditions will be the same as in the

others. I do not believe that it would be fair to drop these cases, because it would not be fair to the other roads to have them provide facilities and allow these roads to operate without such facilities. I simply cite all this to show why I want to continue to report all of the old cases that come within the statutory period, not for prosecution but in order to bring about this condition of improvement.

MR. SHIBLEY: Does this apply to the disposition of stale cases before the Board for consideration, - action taken by the Board to get rid of the stale cases?

MR. CAFFEY: That is one of the topics that I had in mind in suggesting it for discussion.

MR. SHIBLEY: Well, I might say that the Board has not adopted any set routine for disposition of these cases. Each and every case is considered on its merits. Several months ago we had about 30 cases that were stale. The samples had been collected in 1912 and 1913. The statute of limitations had run against some of them. At the same time every case presented a violation of the law. The reason why these cases have not been presented for prosecution was the fact that certain claims for efficacy made in the labels were doubtful and a long set of experiments had been carried on by the Bureau of Entomology member of the Board, with the result showed that the claims were shown not to be warranted. The cases all presented violations of the law. The question came up whether the Board, in view of this, would be justified in dropping these cases. Of course, the statute of limitations helped the Board out on some of the cases. The Board eventually recommended that all the cases be placed in permanent abeyance with directions to collect samples from recent shipments. That is merely one instance of putting in abeyance a number of cases that presented violations of the law. I don't know as I have anything further to say on this.

MR. CAFFEY: Where you determine not to prosecute a case merely because it is old, and then seek a new sample for the purpose of prosecuting the same shipper, in a sense that is not issuing any pardon to him; you are just getting your case against him in a more advantageous position for presentation to the court.

MR. SHIBLEY: Yes, sir.

MR. CAFFEY: Although technically each of them constituted an offense.

MR. SHIBLEY: Of course, in the event of an investigation into the work of the Board and finding in our files these cases that we had put in abeyance which presented violations of the law might stir up a little trouble for the Board, but I will say that the Board is very particular with those cases; in each and every case a detailed statement as to why it was put into permanent abeyance is attached to the papers.

MR. CAFFEY: That would seem very wise because the question may come up hereafter.

MR. STENGEL: In the Bureau of Chemistry, we have cases placed in abeyance on samples where the violation is not particularly heinous, which perhaps the correction of label or change of method of manufacturing will bring the product within the Act itself. In those cases, after citations are issued to the manufacturer or the shipper, and the promise is made that changes will be made in labels or the defect, whatever it may be, will be corrected, instructions are issued to collect other samples and to see whether the promise of the manufacturer has been substantially complied with. After that has been done, it is the practice then to abate the old case, not to refer it at all for prosecution. Where the violator hasn't played fair, the old cases are combined with the new cases and then referred for prosecution. I think that in

brief is the best statement I can give you as to the handling of such cases in the Bureau of Chemistry. We attempt not to refer any cases that have become ancient where perhaps no good will be accomplished by prosecution if the violator has shown a tendency to correct the fault.

DR. PALMER: I have yet to be convinced that the psychological moment to prosecute a case is the earliest possible moment. From a professional standpoint, or from the standpoint of the inspector in the field, or the attorney in charge of the case, it goes without saying the quicker they get through with the case, the better. But with our cases, they are not simply cases; they are campaigns.

MR. CAFFEY: Somewhat along the line of Mr. Raub's cases?

DR. PALMER. Exactly. I agree with Mr. Raub entirely. We had a number of cases in Kansas some years ago which we prosecuted as promptly as possible. Convictions were secured and fines were imposed within a few months, sometimes within a few weeks, but, as I stated the other day, I fail to see that we accomplished anything substantial at the end of two years. There was a change in the number of illegal shipments from that district, but it was not due to the manner of enforcing the Federal law. It was due to a change in the State law. On the other hand, we have had a number of cases in the western district of Virginia and adjoining States, which were stale cases, and some of them just on the point of expiration, but by prosecuting them all at once, or a number of them at once, the results were so successful that apparently, for the time being at least, such action stopped all such shipments from that district. The idea that the Government could come in two years or two years and a half after the offense and prosecute a man up in the mountains for shipping some quail to a distant market, seemed almost like a miracle to those country people. In some instances the shipper had gone out of business. In some cases their representatives came to the office to say that we must be mistaken, as the man had never engaged in that business, but when shown the record, admitted that he had been in the business but had closed it out shortly after the offense was committed. The effect on the community - not on the courts - of handling those stale cases was worth ten times what we have had anywhere else in handling fresh cases. Another instance: One of our assistants uncovered a number of shipments from Norfolk, and in his enthusiasm wished to take up all the cases at once. The result was that prosecutions were started against some 15 defendants simultaneously, including the largest shippers in and all the common carriers running in and out of Norfolk. The result was that the first defendant came in and entered a plea of guilty. The others combined their cases, employed the best counsel they could, induced the United States Attorney to accept an agreed statement of facts, tried out the case on that statement, and we lost all the cases. The one fine that had been paid was remitted. If we had taken those cases separately, one by one, we should probably have won a number of them. A great many of our old cases are wind-falls. We are now working on some cases - some have been referred to you, some are in the hands of the Department of Justice - which came through an old offender in the Middle West who went into bankruptcy last year. We had never been able before to secure any evidence against him, although we tried in every possible way. After the papers were in the court in bankruptcy proceedings, we obtained access to them and secured evidence against a number of shippers who had forwarded game to him. If those cases were all dropped because they are old, it simply means that we throw away evidence that we can not obtain otherwise. In the particular kind of work that we are engaged in, the old case is sometimes the most valuable, and as to what disposition should be made of it, I do not think any general rule can be laid down. Each case should be handled on its merits. If a man has gone out of business, there is no object in imposing a heavy fine on him. But if prosecuting him will act as a deterrent on other shippers, I think the Department is justified in taking some action. It is not always a hardship on the defendants because we have found in

the same districts, once the campaign was on, some one attorney represents 10 or 15 different offenders, enters an appearance for them, and the cases are all compromised on a reasonable basis. The defendants go away well satisfied that they have gotten off lightly, instead of having to employ a separate attorney each time and having to incur the expense of going to distant places for trial. Abandoning a case that we can get evidence in seems to me like throwing away effort and money, and loses sight of what we are really trying to accomplish under all these laws, namely, not the number of cases, but preventing the commission of the offenses.

DR. SMITH: It has been our experience that the quicker these cases are handled, the more interest everybody that has anything to do with them takes in them, all the way up to the judge for that matter. Also the results obtained have been more satisfactory.

MR. CAFFEY: Mr. Lees, we have not heard from you this morning.

MR. LEES: I do not think I have any suggestions to offer. Our cases have moved along pretty promptly. It is only occasionally in some timber trespass that occurred before the lands were included in the National Forest that there is any considerable delay. As Dr. Marlatt and Dr. Hunter suggested we have only a few cases from the Federal Horticultural Board and they are now under way. We all appreciate that as time goes along we are less impressed with these cases than if they had been taken up promptly at the time. I might illustrate that by a case not in connection with our work. I remember when I was a youngster at home, one man killed another. The man who was killed was a railroad man and I heard some railroad men say they would lynch the murderer. He was put in the penitentiary and after two years I know these same people signed a petition to have him pardoned. That shows how we are inclined to overlook serious matters as time goes along. I also recall a story that was told to me about a Sunday-school girl who was brought up under such circumstances that she was not familiar with the Bible. When she was told the story of the Saviour and his crucifixion, she said: "Well, it happened a long time ago. I didn't know him and you didn't know him. Maybe it's exaggerated a little. Let's forget all about it." That illustrates the feeling toward stale cases.

MR. CAFFEY: Any further discussion of this?

MR. GODING: Before the conference breaks up I would like to have Dr. Ellenberger's question answered, Should the Bureau assume the responsibility of abating doubtful cases, or should that be passed to the Solicitor?

MR. WILLIAMS: That was a question that was included in Dr. Melvin's reply to the call for this meeting.

MR. CAFFEY: I would suggest that we hear first what is your view of it.

MR. GODING: I think the Bureau should largely exercise its own discretion in that line. Cases which they are in doubt about they should not report, nor cases that are too close to the line. If it is a case that they cannot really decide, they should refer it to the Solicitor's Office for final decision.

MR. CAFFEY: That is very much in line with my idea. The Bureau knows the whole situation better than we possibly can. We are always glad to advise the Bureau about it; but whether the particular case should be prosecuted is not a legal question, it is rather an administrative question.

MR. WILLIAMS: It seems that the matter of disposition of stale cases is to be determined by the consideration of each case, and if the Bureau is in doubt as to whether it should abate on account of staleness, it might well advise with the Solicitor's

Office and have a general talk and come to some conclusion about it, but ordinarily where the Bureau is primarily responsible, it is a matter of policy. If it would be against the interest of the Bureau to prosecute a case, I believe they ought to abate the case. That seems to be the general trend of the discussion here and seems to me to be quite satisfactory.

MR. CAFFEY: As I said early in the conference, the question of abating cases, of putting in permanent or temporary abeyance, seems to me a difficult one. Nevertheless, the Bureaus ought to go ahead and exercise their responsibility. That is what they are for. If they are not going to exercise their responsibility, there is no use in having the Bureaus. That seems to me to state the situation fairly. Executive officials have no pardoning power. Sometimes there is no alternative except to send the case to court; but a man should exercise his discretion sometimes. The policy adopted of having a complete record of each case, and what you have done in each individual case and why, is a good one, because when the matter comes up later and you are possibly criticized for properly exercising your discretion, you have all the cards on the table.

MR. RAUB: I want to ask your opinion about this: When a case comes to my attention, where there is not enough evidence to prosecute, I prepare a memorandum showing why it should not be prosecuted, which will pass through Dr. Ramsay's hands; and if he agrees with it, he will mark it for filing; but if any question arises in his mind that it might be well to prosecute the case, he will take it up with your office. The idea is to have no possible comeback later on, and it would show that they had been given attention.

MR. CAFFEY: There is this further point in that connection. In order to accomplish substantial uniformity in the way you conduct the business of a bureau in cases of that type, and avoid the playing of favorites by individuals, the final decision as to whether the cases should be put into abeyance, or should be quashed, should be left to responsible officials, and not left to minor officials.

DR. PALMER: I agree with you that the matter should rest with the Bureau, which has the whole facts in its hands; but the question is sometimes befogged by side issues. For example, someone thinks a certain inspector has not been sufficiently active, and the result is that all the cases in that district are dragged in and passed to the Solicitor, and the Solicitor passes them to the Department of Justice. We had a glaring example of this within a year. Someone shipped half a dozen birds from some point in Wisconsin to some point outside the State, No one cared to assume the responsibility of not reporting it, and it was reported to the Department of Justice. After some months, the United States Attorney reported that the marshal found that the shipper was a boy 12 years of age, that no substantial benefit would accrue from the conviction of this young man, and he requested that the case be dropped. We were only too glad to acquiesce in his request. The Bureau did not know the boy's age and there were no other cases from that district.

MR. CAFFEY: It is unfortunate that at times persons measure the efficiency of the enforcement of the regulatory laws by the number of prosecutions, when the very contrary may be the fact.

MR. HENDERSON: I just want to say a word, Mr. Caffey, I agree with Mr. Williams here as his remarks applied to Dr. Palmer's case, but I don't know whether the answer applies where we have many old cases cumbering up the files. The Bureau of Chemistry dropped all cases this winter where shipment was made prior to January 1, 1914. It might have been better if they had

taken a later date. They found themselves struggling with these old cases, a great majority represented practices which had been corrected. Because they were cumbered by these old cases, they were unable to get busy with the current violations. To get rid of these cases, I think, was wise. To have taken time to have gone over each one separately would have been to continue the burden. I believe it was well to make a fresh start.

DR. PALMER: Did the Bureau decide on that matter?

MR. HENDERSON: We agreed with them.

MR. CAFFEY: We did that absolutely. Any further discussion?

I merely want to add this before we adjourn. This thought has occurred to me, that when the minutes are written out, we send a full copy to each Bureau. I have been thinking of propounding to the Bureaus at that time, two questions for their consideration. First, do they think it would be well, after some little editing of the minutes of the conference, to have sufficient copies made - possibly, even printed - to send around to the United States Attorneys and to the United States judges and perhaps distributed a little more generally among the people of the Department than we could possibly do unless we had printed copies. There are two sides to that. One thing that brings that to my mind is a letter that I had recently from a Federal judge who had read the article on the Statutory History of the Department. He said he found it very helpful to know about the laws and activities of the Department as a whole. He had never had this before. Now, if he had any particular matter to come before him, he said he had some background into which to fit it. It is just possible that there is a good deal here that would be very helpful to the United States courts and to the United States Attorneys if we had it in proper form so that they could get at it easily. The second suggestion I thought of submitting to the bureaus or offices was whether, instead of printing, it would be worth while to have, say, 50 or 100 copies of the minutes in some one of the forms we use here, mimeograph or otherwise, so that each bureau or office could have as many copies as it desires. I will submit these questions after I get the minutes completed. I don't suppose it is worth our while going into full discussion of the matter now.

DR. PALMER: Would it not be more generally useful if the general substance of the matter were boiled down in a brief statement of conclusions?

MR. CAFFEY: That we would accomplish to some extent by editing. We have not attempted to reach conclusions. Each bureau is left as free now as before. We have just exchanged this information and it would be my suggestion, for the purposes of persons in the bureaus who have not attended the conference, that perhaps it might be of more value to keep it in extended form. However, this is a matter that will come up when the minutes are completed and sent around to the bureaus. If there is nothing else we will consider the conference adjourned.